SUBCONTRACTING PLAN COMPLIANCE MONITORING GUIDE FOR CONTRACTING OFFICERS AND SMALL BUSINESS SPECIALISTS



OFFICE OF SMALL DISADVANTAGED BUSINESS UTILIZATION

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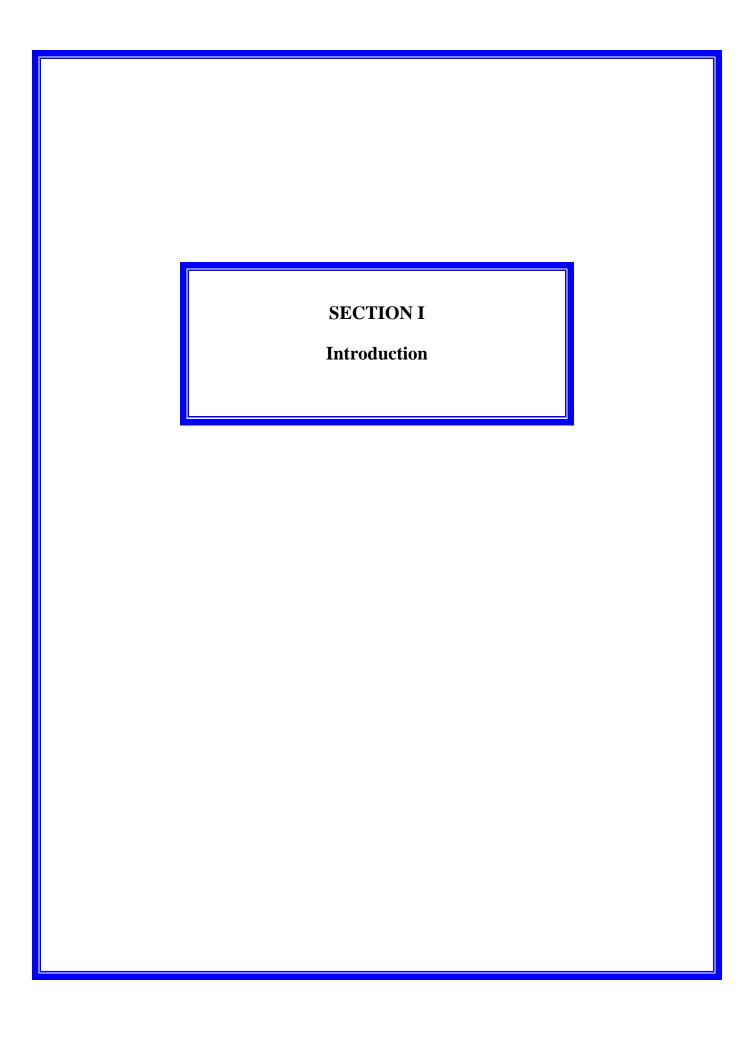
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Introduction

The U.S. Department of Transportation's (USDOT) vision for an agency wide subcontracting program corresponds with that of the Federal Acquisition Council's (FAC), which is: "To build an accountable, effective, transparent government-wide subcontracting system." The Department's goal is to develop a network of small business concerns that can help each agency achieve their respective mission.

Throughout this guide, the term "small business concerns" includes:

- ☐ Small business (SB);
- Small disadvantaged business (SDB);
- Women-owned small business (WOSB);
- Historically Underutilized Business Zone small business (HUBZone);
- ☐ Veteran-owned small business (VOSB); and
- Service disabled veteran-owned small business (SDVOSB).

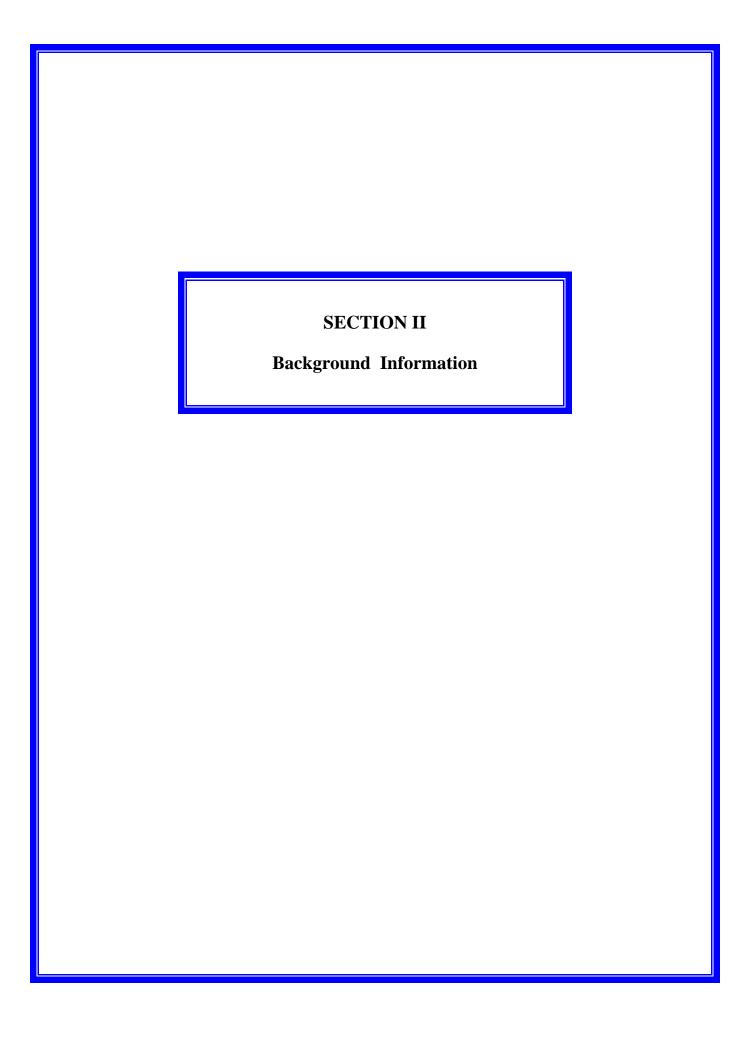
In order to achieve this goal, USDOT, though the Office of Small Disadvantaged Business Utilization (OSDBU), considers the subcontracting program a major area for concentrated emphasis. Since this segment in the Federal contracting process offers a significant amount of opportunities for small and disadvantaged businesses, it has been determined that additional efforts in this arena can have a substantial impact on the overall goal of creating maximum feasible opportunities for America's small businesses.

The intent of this document is to promote the use of all small business concerns through the subcontracting program and to provide guidance to assist contracting officers and contract administrators to ensure that prime contractors are in compliance with the subcontracting plans incorporated into contract award documents.

This guide is intended for members of the acquisition workforce, contracting officers, and others involved in contract administration. The guide is also designed to assist Small Business Specialists and to suggest new approaches for contracting officers so they may be more effective in managing subcontracting programs during contract administration.

Department of Defense (DoD) Small Business Specialists must follow guidelines detailed in the *Contractor's Subcontracting Program Review Guide*, which is published by the Defense Contract Management Agency (DCMA). Moreover, any procedures presented within this guide are superseded by the DCMA subcontracting guide, when DoD projects are under consideration. A comprehensive discussion of guidelines for DoD subcontracting specifications can be found at the following website: http://guidebook.dcma.mil/37/guidebook.tools.htm.

The document is not intended to be all-inclusive nor to replace or supersede existing Federal Acquisition Regulations or agency specific regulatory guidance.



Federal Acquisition Overview

Congress authorized the subcontracting policy as a way to encourage subcontracting opportunities that may be commensurate with the efficient and economical performance of the contract. The Federal Government's role in assisting small businesses through the subcontracting program was changed significantly by P.L. 95-507. Prior to enactment of the law, the emphasis was on the voluntary best efforts of cooperating prime contractors. This statute changed the emphasis from *voluntary* to *mandatory* and from *best efforts* to *maximum practicable opportunity*.

The statutory and regulatory requirements of the small business subcontracting program are defined in the provisions of the Small Business Act and in the Federal Acquisition Regulations (FAR), as contained in FAR Subpart 19.7.

The *Small Business Act*¹(*The Act*) requires that any apparent successful large business offeror responding to a solicitation for an agency's requirement that is expected to exceed \$500,000 (\$1,000,000 for construction) shall negotiate a subcontracting plan with that agency's procurement authority.

The Act stipulates that the subcontracting plan be included in and made a material part of the contract. Further, if within the time limits prescribed by the contracting agency, the apparent successful offeror fails to negotiate an acceptable subcontracting plan, such offeror shall become ineligible for contract award.²

The statute is specific, clear and unequivocal that, "<u>no contract</u> shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror, pursuant to the provisions of the Act, provides the maximum practicable opportunity for small business concerns...to participate in the performance of the contract."

Additional guidance as outlined in FAR 19.702 also states that any contractor receiving a contract for more than that of the simplified acquisition threshold must agree in the contract that small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant

¹Small Business Act (Public Law 85-536, as amended).

²See historical reference P.L. 95-507, Section 211 and Office of Federal Procurement Policy January 24, 1980 Policy Letter No. 80-1, See FAR part 19.702(a)(1) and 19. 702(a)(2).

to the terms of their subcontracts with small business, veteran-owned small business, servicedisabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns.³

In order to further motivate prime contractors to execute a successful subcontracting program, the Small Business Act also authorizes each Federal agency to provide incentives, as deemed appropriate, to prime contractors in order to encourage subcontracting opportunities for all types of small business concerns.

Note: For purposes of this guide, "Prime Contract" has the same meaning as the definition of "contract" in FAR 2.101. "Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders; such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq." A prime contract is any direct contract between the Government and the contractor.

Agency Responsibility

The following Federal organizations are involved in either acquisition procedures or the formulation of policy and are authorized by statute and regulation to intervene in the acquisition process.

Office of Federal Procurement Policy

The Office of Federal Procurement Policy (OFPP) was established as a statutory office within the Office of Management and Budget. The statute charges OFPP with the responsibility of providing overall direction of government-wide procurement policies, regulations, procedures, and forms for

³The policy should also cover (1) qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the *Committee for Purchase from People Who Are Blind or Severely Disabled* under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48) and (2) historically black colleges (or universities) or minority institutions that meet the definition in the clause at 252.219-7003, Small, Small Disadvantages and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

executive agencies. In addition, the OFPP must also promote economy, efficiency, and effectiveness in the procurement of property and services for the Executive Branch of the Federal Government.

The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

Among OFPP's various responsibilities is the duty to develop policies that will promote achievement of goals for participation in Federal contracting and subcontracting by small businesses, HUBZone small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, veteran-owned small businesses, service-disabled veteran-owned small businesses, and small businesses owned and controlled by women.

OFPP works closely with the Small Business Administration (SBA) and the Federal Acquisition Regulatory Council to develop such policies.

Office of Small and Disadvantaged Business Utilization

The Office of Small and Disadvantaged Business Utilization (OSDBU) was established pursuant to Public Law 95-507 which assigned it the task of fostering the use of small and disadvantaged businesses as Federal contractors. The Small Business Act requires that each Federal agency with contracting authority establish an Office of Small and Disadvantaged Business Utilization.

The Act requires that management of each such office shall be vested in an officer or employee of such agency who shall:

	Be known as the Director of Small and Disadvantaged Business Utilization;
	Be appointed by the head of the agency;
٥	Be responsible only to, and report directly to, the head of the agency or to the deputy of the agency head, except that the Director for the Office of the Secretary of Transportation shall be responsible only to, and report directly to, the Secretary of Transportation or the Secretary's designee;
	Be responsible for the agency's implementation and execution of the functions and duties under sections 8, 15, and 31 of the Act;
•	Identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the administration to revise the procurement strategies for such proposed solicitations to increase the probability of participation by small businesses as prime contractors, or to facilitate

	small business participation as subcontractors and suppliers where participation as prime contractors is not likely;
•	Assist small business concerns to obtain payments, late payment interest penalties, or information on contractual payment provisions, in conformity with Chapter 39 of Title 31, United States Code, or any other protections for contractors or subcontractors (including suppliers) included in the FAR or any individual agency supplement to the FAR;
	Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15 and 31 of the Act, including subcontracting duties; and
	Make recommendations to Contracting Officers as to whether a particular contract requirement should be awarded pursuant to Subsection (a) of Section 8 of the Act. Failure of the Contracting Officer to accept any such recommendations shall be documented and included in the contract file.
	Assign a small business technical advisor who shall be a full time employee of the procuring activity and whose principal duty shall be to assist the SBA procurement representative in performing functions related to Sections 8, 15, and 31 of the Act;
٥	Cooperate and consult on a regular basis with SBA with respect to carrying out the functions and duties of Sections 8, 15, and 31;
specific	duties of the OSDBU include, but are not limited to:
٥	Developing systematic procedures for insuring the effective execution of the Act, as amended;
	Recommending agency goals and goals for solicitations;
٥	Training and educating agency staff whose duties and functions relate to Sections 8, 15, and 31;
۵	Conducting outreach, liaison, source listings and seminars for small business concerns;
۵	Publishing required information brochures and documents; and
	Overseeing the implementation of Section 223(a) of P.L. 95-507. This section requires that for any requirement solicited by a Federal agency, the agency will, upon request, provide to any small business a copy of the specifications, the name and

Other

telephone number of an employee to answer questions concerning the requirement, and adequate citations of each major Federal law or agency rule to which the business must comply in performing any resultant contract.

- Reviewing subcontracting plans and offer recommendations;
- Monitoring compliance with subcontracting plans;
- Participating in pre-solicitation and pre-award conferences, and to conducting small business workshops that provide the various categories of small businesses the opportunity to present their capabilities to prime contractors; and
- Publishing a directory of prime contractors as a marketing tool to assist small businesses;

The OSDBU may issue notices, standard operating procedures and recommend changes to departmental or agency acquisition regulations or acquisition manuals that seek to strengthen and clarify departmental or agency small business policy. Contracting Officers are encouraged to partner with the OSDBU whenever issues concerning FAR part 19 or compliance matters associated with 13 CFR or the Small Business Act arise.⁴

Since the OSDBU is responsible for the review and monitoring of prime contractor's subcontracting plan, the OSDBU then becomes an indispensable part of the effort to increase small business participation in subcontracting. In a recent General Accounting Office (GAO) report about how agency advocates view their roles, almost all the Directors reported that reviewing and monitoring subcontracting plans are functions of the OSDBU office.⁵

The Offices of Small Business and Disadvantaged Business Utilization can also assist Contracting Officers with carrying out their responsibilities under the Small Business Act by arranging small business workshops, seminars, training and other networking events.

In most departments and agencies, the OSDBU is also involved in selecting departmental or agency Small Business Specialists. Within each department or agency, the OSDBU may delegate small business authority to a Small Business Specialist. The OSDBU and its Small Business Specialists are essential to the subcontracting plan review process.

⁴Within the Department of Defense, the Office of Small and Disadvantaged Business Utilization (SADBU) works with officials responsible for acquisitions to establish policies and procedures. The SADBU does not have authority to issue changes to department or agency acquisition regulations.

⁵GAO Report# GAO-0-04-451, March 2004, page 17.

Small Business Administration (SBA)

The Small Business Administration also has a role in carrying out the subcontracting program. As prescribed by FAR 19.707⁶, the SBA may:

- Assist both Government agencies and contractors in carrying out their responsibilities with regard to subcontracting plans;
- Review (within 5 working days) any solicitation that meets the dollar threshold as prescribed by FAR 19.702(a) or before the solicitation is issued;
- Review (within 5 working days) before execution any negotiated contractual document requiring a subcontracting plan, including the plan itself, and submit recommendations to the Contracting Officer, which shall be advisory in nature; and
- Evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis.

The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports the achievements to the President. The President includes each agency's actual goal achievements in the "State of Small Business" report.

The President's report also includes an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards. SBA is responsible for submitting this report to the President and Congress.

Key Stakeholders

Key stakeholders are internal or external organizations, groups or individuals who may have a significant role in the subcontracting compliance and monitoring process. This role may be authorized by statute, by Federal acquisition policy as contained in the FAR and supplemented by departmental or agency regulations, or by the Office of Federal Procurement Policy. The major stakeholders:

⁶If there are any conflicts between this guide and the language in subpart 19.7 of the *Small Business Subcontracting Program*, subpart 19.7 prevails.

- Are actively involved in the administration of policy, i.e., Contracting Officer, Small Business Specialist (SBS), OSDBU, Prime Contractor's Small Business Liaison Officer (SBLO) and the SBA Procurement Center Representative (PCR);
- Often have statutory, regulatory, oversight or compliance auditing authority;
- Facilitate processes to meet program needs and accomplish the socio-economic goals;
- Can prevent the acquisition process from moving forward by filing agency appeals or influencing key decision makers; and
- Have important statutory or regulatory objectives.

Contracting Officer (CO)

Both the FAR and the Small Business Act envision a proactive role for the Contracting Officer. These regulations assign a significant part of the responsibility for abiding by the subcontracting goal policy to the official with authority to enforce the contract. The effective administration of the subcontracting function can facilitate the process of creating opportunities for small businesses by encouraging them to subcontract with prime contractors.

The role of the Contracting Officer with regard to a contract that is subject to submission of a subcontracting plan is to ensure that maximum opportunities are provided for all small business categories. In addition, the CO negotiates with the contractor, coordinates with the responsible Small Business Office, SBA, and DCMA, and approves the subcontracting plan.

Administrative Contracting Officer (ACO)

The administrative Contracting Officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance and any subcontracting plan included in the contract.

The ACO is required to provide the necessary information and advice to support the Contracting Officer, as appropriate. The ACO should furnish documentation on the contractor's performance and compliance with subcontracting plans under previous contracts, as well as information on the extent to which the contractor is meeting the goals under the current plan. This would include subcontracting with eligible small business, veteran-owned small business, service-disabled veteran-

owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see FAR 19.706).

Procurement Center Representative (PCR)

The Small Business Act authorizes the administrator of the U.S. Small Business Administration to appoint and assign Procurement Center Representatives (PCR) to such departments and agencies and to any contracting activity or contract administration office to carry out SBA policies and programs. PCRs assist the SBA in monitoring the performance of the procurement activities and to ascertain the degree of compliance with the Small Business Act, report to their immediate supervisors all instances of noncompliance with such requirements, and increase, insofar as possible, the number and dollar value of small business procurements.⁷

Although PCR's recommendations are advisory, Contracting Officers should take prudent note of their recommendations.⁸

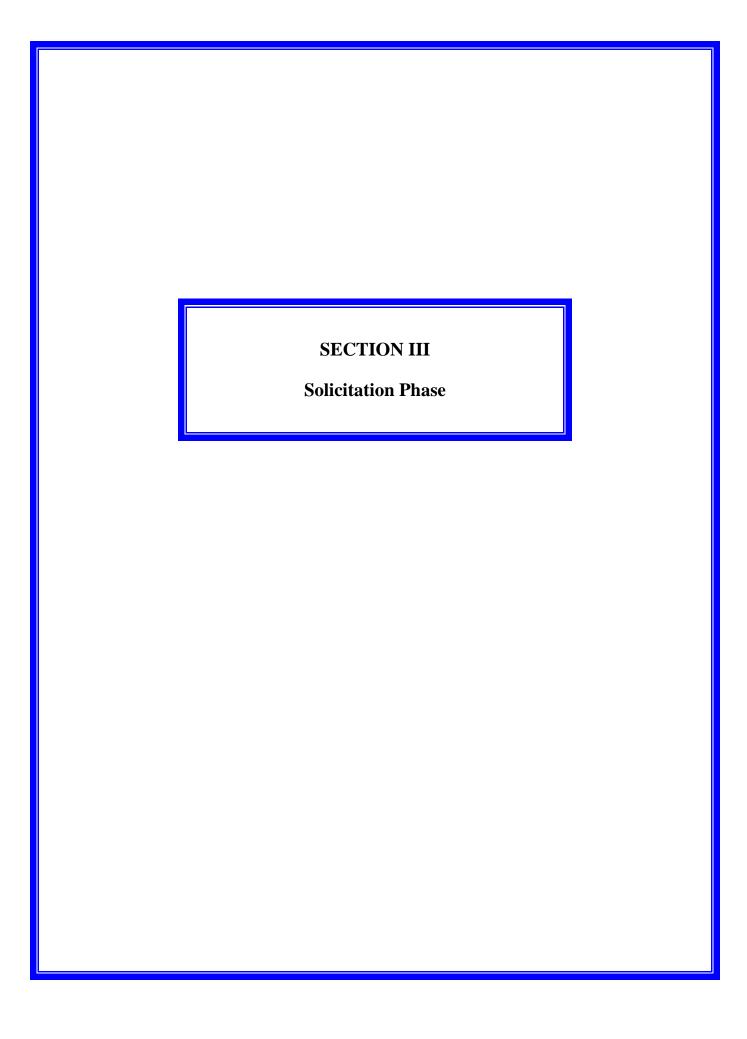
Small Business Specialist (SBS)

The Small Business Specialist provides assistance to the Contracting Officers by determining the need for, and acceptability of, subcontracting plans. In addition, they assist the Administrative Contracting Officer in evaluating, monitoring, reviewing, and documenting contractor compliance with the subcontracting plans. The agency Small Business Specialist is the Contracting Officer's first point of contact for review of all subcontracting plans.

Small Business Specialists also assist small businesses in discovering and expanding subcontracting opportunities. They work with large prime contractors to identify competent small business subcontractors, and assist them in interpreting the Small Business Act, Section 8(d) requirements, its implementing regulations, including the development of subcontracting plans. The Specialists should also assist Contracting Officers in conducting pre-award evaluation of subcontracting plans and should conduct post-award review and evaluation of contractually required subcontracting plans.

⁷For details on statutory authorities of the PCR, see Small Business Act (Public Law 85-536, as amended) and applicable provision of FAR part 19.402.

⁸See FAR 19.707 for details on responsibilities and limitations.



Introduction

The key to implementing a successful subcontracting program is the clarity with which the requirements (statutory, regulatory, agency specific, etc.) are explained in the solicitation. By ensuring that all deliverables regarding the subcontracting plan implementation are clearly outlined in the solicitation, the prime contractor will be more aware of the Contracting Officer's expectations in the execution of the proposed subcontracting plan.⁹

Who is eligible to be a Subcontractor?

The FAR defines a subcontractor as any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. In order to represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or woman-owned small business concern, the firm must meet the appropriate definition as established in FAR 2.101 and FAR 19.001.

Most of the small business categories (SB, WOSB, VOSB, and SDVOSB) do not require a firm to be certified by any particular agency. Only the Small Disadvantaged Business (SDB), the Small Business Administration 8(a) Program (SBA 8(a)), and the Historically Underutilized Business Zone (HUBZone) categories, require certification by the SBA. A prime contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business concern.

A prime contractor can establish the validity of a small business concern's SDB, SBA 8(a), or HUBZone representations and certifications by accessing the Central Contractor Registration (CCR), (go to http://www.ccr.gov then click on Dynamic Small Business Search). The information contained in the database regarding the SDB and HUBZone status is only entered by the appropriate representatives of the SBA.

FAR Subcontracting Regulations (Basic Rules)

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

⁹Small-disadvantaged business concerns operating within the Department of Defense (DoD) must refer to DFAR §215.304.

¹⁰The Small Business Administration is statutorily responsible for 8(a), SDB, and HUBZone certifications.

- In negotiated acquisitions, each solicitation for offers to perform a contract or contract modification, that individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparent successful offeror fails to negotiate a subcontracting plan acceptable to the Contracting Officer within the time limit prescribed by the Contracting Officer, the offeror will be ineligible for award.
- In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the Contracting Officer, the bidder will be ineligible for award.

Failure to comply with a subcontracting plan is considered a material breach of the contract and could result in the imposition of liquidated damages.¹¹

Subcontracting plans are not required:

From small	business	concerns	that are	serving	as a	prime	contracto	r;

- ☐ For personal services contracts;
- For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas (See FAR part 19.702(b));
- For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219-8, Utilization of Small Business Concerns (or equivalent prior clauses (*e.g.*, contracts awarded before the enactment of Public Law 95-507); and
- When subcontracting opportunities do not exist. (If it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the Contracting Officer and placed in the contract file.)

For multiyear contracts or contracts containing options, the subcontracting plan applies to the basic contract and all options. The cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary. If a subcontracting plan is necessary, the plan shall contain a separate statement and goals for the basic contract and for each option.

¹¹Contracting Officers and Small Business Specialists must consult with agency general council before using this provision.

Types of Subcontracting Plans

Individual Contract Plan means a subcontracting plan that covers the entire contract period (including option periods) applies to a specific contract and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contact. Once accepted by the Contracting Officer, the individual plan is incorporated into and made a material part of the contract. This is the most common form of subcontracting plan.

Master Plan means a subcontracting plan established on a plant or division-wide basis which contains all of the elements required by the clause at FAR 52.219-9 except for subcontracting goals. A Master Plan shall be effective for a three-year period after approval by the Contracting Officer. However, it is incumbent upon the prime contractor to maintain and update the Master Plan. Changes required to update a Master Plan are not effective until approved by the Contracting Office. Since the Master Plan does not contain information related to any specific solicitation (i.e., subcontracting goals or products to be subcontracted) an addendum must be developed for the specific solicitation in progress. Once accepted by the Contracting Officer, the approved Master Plan along with an addendum with individual contract goals is incorporated into and made a material part of the contract.

Commercial Plan means a subcontracting plan (including goals) that covers the prime contractor's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g. division, plant or product line). The plan includes sales of the items to both commercial and government sectors.

The commercial plan is submitted to either the first Contracting Officer awarding a contract subject to the plan during the *prime contractor's fiscal year*, or if the prime contractor has ongoing contracts with commercial plans, to the Contracting Officer responsible for the contract with the latest completion date. The approved commercial plan remains in effect during the prime contractor's fiscal year for all Government contracts in effect during that period. A new plan must be submitted to the Contracting Officer responsible for the uncompleted Government contract prior to the end of the prime contractor's fiscal year. See FAR 19.704(d) for specific guidance on Commercial Plans.

Specific Contract Clauses

The Small Business Act directs that Federal Government contracts greater than the simplified acquisition threshold must contain the clause 52.219-8, Utilization of Small Business Concerns and for contracts expected to exceed \$500,000 (\$1,000,000 for construction) that offer subcontracting possibilities, the clause at FAR 52.219-9, Small Business Subcontracting Plan.¹²

A Contracting Officer may use any of the following contract clauses:

- Insert the clause at FAR 52.219-8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless a personal services contract is contemplated (see FAR 37.104), or the contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.
- Insert the clause at FAR 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$500,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at 52.219-8, Utilization of Small Business Concerns. This does not apply if the acquisition is set aside or is to be accomplished under the 8(a) program.
- When contracting by sealed bidding rather than by negotiation, the Contracting Officer shall use the clause at FAR 52.219-9 with its Alternate I.
- When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in FAR 19.705-2(d), the Contracting Officer shall use the clause at FAR 52.219-9 with its Alternate II.
- ☐ Insert the clause at FAR 52.219-16, Liquidated Damages-Subcontracting Plan, in all solicitations and contracts containing the clause FAR 52.219-9, Small Business Subcontracting Plan, or the clause with its Alternate I or II.
- The Contracting Officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at FAR 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required (see FAR 19.702), and inclusion of a monetary incentive is, in the judgment of the Contracting Officer, necessary to increase subcontracting opportunities for small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in the paragraph at FAR19.708 (c)(3) are applicable.

 $^{^{12}} See\ P.L.\ 100-656\S 502$ and $\S 503$, See P.L. 103-355, 10/13/1994 and P.L. 103-135,12/2/1997 and OFPP Policy letter 99-1.

The Contracting Officer may vary the terms of the clause as specified at FAR 19.708 (c)(2).

The Contracting Officer shall insert the clause at 52.219-24, Small Disadvantaged Business Participation Program-Targets, and 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

Subcontracting Goal Development

Congress first enacted a procurement goal in prime contracting for small business in 1988. Since then, goals have been increased, extended to include subcontracting and applied to certain sectors of small businesses. The Small Business Act (Public Law 644 §15(g)) includes the various procurement goals. They are summarized in the table below:

Program	Prime	Sub- contracting	Statutory Reference
Small Business	23%		Public Law 95-507 § 221 (1978) & 105-135 § 603(b) (1997 increase to 23%)
Small Disadvantaged Business	5%	5%	Public Law 100-656 § 502 (1988)
Women-Owned Small Business	5%	5%	Public Law 103-355 § 7106(a) (1994)
HUBZone	3%	0	Public Law 105-135 § 603(b) (1997)
Service-Disabled Veteran- Owned Small Business	3%	3%	Public Law 106-50 § 502(b) (1999)

^{*} Each Federal Agency has agreed to a 3 percent HUBZone contracting goal.

All solicitations where subcontracting possibilities exist shall include the agency's established subcontracting goals. The FAR states that subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use all types of small business concerns to the maximum extent practicable.

While the use of higher subcontracting goal requirements is encouraged, subcontracting goals should not only be indicative of the current market, but should also reflect the different nuances that exist between industries (i.e., Construction, Services, Supplies, Technology, Transportation, etc.). The percentages should be set only after careful market research so as not to drive inefficient contract performance.

Total Contract Dollars vs.
Total Subcontracting Dollars

Subcontracting goals are expressed in terms of dollars and percentages to be subcontracted for each category. FAR 52.219-9 specifically requires goal percentages to be expressed in terms of the percent of "total planned small business (SB) subcontracting dollars."

In recent years, Contracting Officers have required goals to be submitted based upon a percentage of the "total contract dollars." The confusion is based upon FAR 19.1202-4(a), a requirement for SDB targets to be expressed as a percentage of "total contract dollars" and 13 CFR 125.2, a requirement that allows the PCR to require goals to be expressed as a percentage of "total contract dollars."

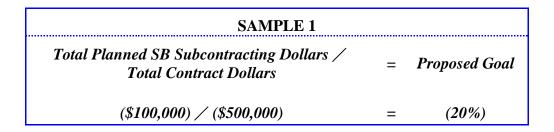
Care must be exercised to ensure that proposed subcontracting goals are accurately calculated. Note that the dollar amount to be subcontracted for a given category <u>will not change</u>. Consider a sample contract with the following specifications:

Total Contract Dollars = \$500,000

Subcontract Total = \$200,000

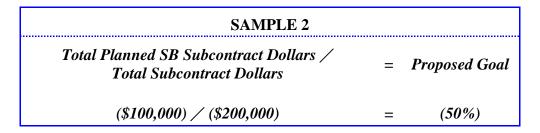
Total Planned SB Subcontracting Dollars = \$100,000

The dollar amount to be subcontracted for a given category will not change. What may change is the proposed percentage based on the dollar amount used in the calculation. Based on the above sample, a calculation using "contract total" as the denominator would produce the following result:



Section 3: Request for Proposal/Solicitation Phase

If the "subcontract total" were used with the above sample, the following proposed goal would result:



What is the Difference? Since the denominator used in Sample 1 is larger, the proposed percentage will be lower. Of course the converse is true. The denominator in the second calculation, Sample 2, is smaller, thus the proposed percentage will be higher.

What do I use? Sample 1 is the more appropriate measure of progress toward meeting the small-business contracting goal. Measuring progress based on "subcontract total" results in a distorted representation of small businesses within a project. Determining progress relative to "total contract dollars" is consistent with DOT provisions and policies.

Subcontracting Plan Incentives

In negotiated acquisitions, a Contracting Officer can encourage the development of increased subcontracting opportunities by providing monetary incentives and non-monetary incentives, such as payments based on actual subcontracting achievement or award-fee contracting. (FAR 52.219-10 and FAR 19.708 ©) (1)).

When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the Contracting Officer must ensure that:

- The goals are realistic;
- Any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended.

The incentive should not reward the prime contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

FAR 19.708 does not apply to SDB subcontracting because SDB subcontracting has its own authority (See FAR 19.1203). Under this authority, the Contracting Officer may encourage increased subcontracting opportunities in the NAICS Industry Subsector as determined by the Department of

Section 3: Request for Proposal/Solicitation Phase

Commerce for SDB concerns. Contracting Officers are encouraged to use the clause at FAR 52.219-26, Small Disadvantaged Business Participation Program-Incentive Subcontracting, and the FAR provisions as stated in FAR 19.1204©) whenever possible.

Monetary incentives must be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

The Contracting Officer should coordinate review of any proposed solicitation requiring submission of a subcontracting plan with the Small Business Specialist and program managers to determine if the Disadvantaged Business Participation Program Incentive Subcontracting authority should be included in any final solicitation.(refer to Best Practice #1)

Best Practice #1

Background:

The Naval Sea Systems Command's Team Submarine (Team Sub) mission is such that many of their acquisitions are centered on the development of new designs and technologies that will improve the Navy's fleet. Because of the high dollar amount and given the subject matter, Team Sub deals primarily with the three dominant large shipbuilding contractors (i.e., Raytheon, General Dynamics, Northrop Grumman) and depends on linking these primes with small disadvantaged, and woman-owned subcontractors to meet their office's small business goals.

The Executive Director, Program Executive Officer of Naval Sea Systems Command, Team Submarine follows a three-tiered approach to utilizing small business concerns in his/her acquisition processes to meet his/her subcontracting goals.

Best Practice #1 continued

The three tiers include:

- Utilizing the Small Business Innovative Research Program to "test drive" small businesses to determine their capabilities and in some cases to fund them through to Phase III at which point they would be linked up with a prime contractor to implement their technology on the larger scale;
- Placing subcontractor requirements and incentives in RFPs and contracts to encourage the use of small businesses; and
- Reaching out to small businesses through program advocacy.

Best Practice: "Using incentives as part of the approach:"

The second tier of the approach to encouraging small business concerns, involvement in Team Subcontracts is through subcontracting requirements. Many of Team Sub's RFPs included specific language designating that 42% of the total contract value must be set aside for small businesses. Further, RFP guidelines require bidding companies to include subcontracting plans as part of their proposals that identify small business utilization plans and methodologies.

After a contract has been awarded, Team Sub leverages execution of small business plans through monetary incentives which are built into the framework of the contracts. The Executive Director commented, "When a million dollar incentive is on the line, prime contractors will find a way to utilize a small business."

Subcontracting Plan Evaluation Factor

The Federal Acquisition Streamlining Act (FASA) of 1994 resulted in a myriad of changes in Federal contracting. In FASA, Congress acknowledged that it is appropriate and relevant for the Federal Government to consider a contractor's past performance in evaluating whether that contractor should receive future work. Section 1091 of FASA states, "Past contract performance of an offeror is one

of the relevant factors that a contracting official of an executive agency should consider in awarding a contract." Therefore, it is appropriate for a contracting official to consider an offeror's past contract performance as an indicator of whether the offeror will successfully perform a contract that will be awarded by that official.

Past performance achievements in awarding subcontracts to small business concerns for the same or similar products or services should be included as an evaluation factor or sub-factor in the solicitation. Use past performance as a key evaluation factor to assess the prime contractor's performance in meeting its prior subcontracting goals. For solicitations involving bundling that offer a significant opportunity for subcontracting, the Contracting Officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans. (FAR 15.304)

Currently, the SBA has issued a proposed rule that will amend portions of the SBA regulations that govern small business subcontracting. Specifically, this proposed rule provides a list of factors to consider in evaluating the prime contractor's performance and good-faith efforts to achieve the requirements in its subcontracting plan. The proposed rule also authorizes the use of goals in subcontracting plans, and/or past performance in meeting such goals, as a factor in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts. ¹³

¹³Federal Register, October 20, 2003, Vol. 68, No. 202, pages 59999 and 60015.

SECTION IV Subcontracting Plan Template Due to the unique defense contracting requirements, DoD Contracting Officers and Small Business Specialists must follow DCMA guidelines to determine applicability of the Subcontracting Plan Template.

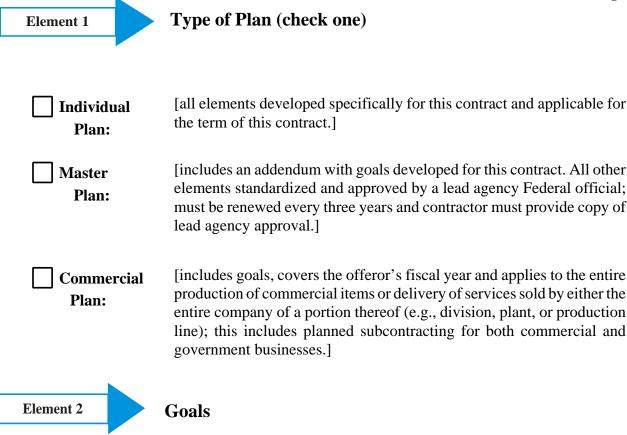
Contractor Identification Data

Contractor:	
Address:	
Solicitation/Contract	
Number: .	
Project Title:	
Total Contract Amount (inclusive of option years):	
Period of Contract	
Performance (MO&YR):	
Option Years:	

Note: Federal Acquisition Regulation (FAR), paragraph 19.708(b) prescribes the use of the clause FAR 52.219-9 entitled "*Small Business and Small Disadvantaged Business Subcontracting Plan.*" The following is a suggested model for use when formulating such subcontracting plan. While this model plan has been designed to be consistent with FAR 52.219-9, other formats of a subcontracting plan may be acceptable.

However, failure to include the essential information as exemplified in this model may be cause for either a delay in acceptance or the rejection of a bid or offer where the clause is applicable. Further, the use of this model is not intended to waive other requirements that may be applicable under FAR 52.219-9.

"SUBCONTRACT" – The term as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.



State separate dollar and percentage goals for small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns as subcontractors as specified in FAR 19.701 (c). If the plan is a commercial plan, please indicate the offeror's total projected sales (in dollars) and the total value of projected subcontracts to support sales for the base year and each option year.

Note: If the offeror is submitting an individual plan, the plan must contain separate statements (see Paragraphs 5 and 6 below) and goals for the basic contract and for each option.

Note: Items "B" through "G" are expressed as a percentage of "A."

Type of Organization for Planned		Current Goal		
	Subcontracting	Whole Dollars	Percent	
A.	SMALL BUSINESS CONCERNS (include SDB WOSB, HBCU/MI, HUBZone SB, and VOSB (including Service-Disabled VOSB)) (Dollar Amount and Percent of c.)			
В.	LARGE BUSINESS CONCERNS (Dollar Amount and Percent of c.)			
C.	TOTAL (Sum of a and b.)			
D.	SMALL DISADVANTAGED BUSINESS (SBD) CONCERN)S (Dollar Amount and Percent of c.)			
E.	WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of c.)			
F.	HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS (Dollar Amount and Percent of c.)			
G.	VETERAN-OWNED SMALL BUSINESS CONCERNS (including Service-Disabled Veteran-Owned SB Concerns) (Dollar Amount and Percent of c.)			
Н.	SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of c.)			

Element 3

Describe all the products and/or services to be subcontracted under this contract, and an indication of the types of organizations

[i.e., Large Business (LB), Small Business (SB), Small Disadvantaged Business (SDB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran Owned Small Business (SDVOSB) Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone) (check all that apply) Subcontracted Product/Services:]

(Attach additional worksheets if necessary)

Element 4 Description of the Method Used

Explain the process used to develop the subcontracting goals for small and small disadvantaged business concerns (i.e., explain the method and state the quantitative basis (in dollars) used to

Indirect costs "Have Not Been" included in the dollar and percentage subcontacting goals stated above.

Element 6

(Explain Indirect Cost Method, if used)

If indirect costs have been included, explain the method used to determine the proportionate share of such costs to be allocated as subcontracts to small, small disadvantaged, womenowned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns
Element 7 Program Administrator

Name, title and position within the corporate structure, and duties and responsibilities of the employee who will administer the contractor's subcontracting program.

Name:	
Title:	
Address:	
Telephone:	
Email:	

Duties of the Administrator: Has general overall responsibility for the contractor's subcontracting program (i.e., developing, preparing, and executing individual subcontracting plans and monitoring performance relative to the requirements of this particular plan). For example, duties may include, but are not limited to, the following activities:

A. Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns;

- **B.** Assuring that above mentioned businesses are included on the source lists for solicitations for products and services they are capable of providing;
- C. Developing and maintaining lists of small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns from all possible sources;
- **D.** Ensuring periodic rotation of potential subcontractors on above lists;
- Ensuring that procurement "packages" are designed to permit the maximum possible participation of small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns:
- F. Making arrangements for the use of various sources for the identification of small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns, such as, the Central Contractor Registration (CCR), Dynamic Small Business Search, the Minority Business Development Agency in the Department of Commerce, local small business and minority associations, and contacts with the Office of Small and Disadvantaged Business Utilization;
- **G.** Overseeing the establishment and maintenance of contract and subcontract award records;
- **H.** Attending or arranging for the attendance of company representatives at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, Procurement Conferences, etc;
- I. Ensuring that small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns are made aware of subcontracting opportunities and how to prepare responsive bids or proposals to the company;.
- **J.** Conducting or arranging for the conducting of training for purchasing personnel regarding the intent and impact of the Small Business Act on purchasing procedures;
- **K.** Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals;
- L. Preparing, and submitting timely, required subcontract reports;

N	М.	Coordinating the company's activities during the conduct of compliance reviews by Federal agencies; and
ľ	N.	Other Duties: (List below)
Element	t 8	Equitable Opportunity

Describe efforts the offeror will make to ensure that small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns will have an equitable opportunity to compete for subcontracts. These efforts may include, but are not limited to, the following activities:

A. Outreach efforts to obtain sources:

- 1. Contacting trade associations;
- **2.** Contacting business development organizations;
- 3. Attending conferences and trade fairs to locate small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns;
- **4.** Requesting sources from the Central Contractor Registration (CCR), (go to http://www.ccr.gov then click on Dynamic Small Business Search);
- 5. Using newspaper or magazine ads to encourage new sources; and
- **6.** Contacting veteran service organizations.

B. Internal efforts to guide and encourage purchasing personnel:

- **1.** Presenting workshops, seminars, and training programs;
- **2.** Establishing, maintaining, and using small business socio-economic source lists, guides, and other data for soliciting subcontracts; and
- **3.** Monitoring activities to evaluate compliance with the subcontracting plan.

Page 3
C. Additional efforts: (list below)
Flow Down Clause
How-Down Clause: The contractor agrees to include the provisions under FAR 52.219, "Utilization of Small Business Concerns," in all subcontracts that offer further subcontracting portunities. All subcontractors, except small business concerns, that receive subcontracts is excess of \$500,000 (\$1,000,000 for construction) must adopt a plan that complies with the equirements of the clause at FAR 52.219-9, "Small Business Subcontracting Plan."
Agree Initial:
Do Not Agree Initial:

Element	10
---------	----

Reporting and Cooperation

The contractor gives assurance of: (1) cooperation in any studies or surveys that may be required; (2) submission of periodic reports which show compliance with the subcontracting plan; (3) submission of Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and SF-295, "Summary Subcontract Report," in accordance with the instructions on the forms; and (4) ensuring that subcontractors agree to submit Standard Forms 294 and 295.

	Agree	Initial:	
	Do Not Agree	Initial:	
Element 11 Rep	orting Periods	and Due Date	S

Period Covered	Report	Due Date
Oct. 1 - Mar. 31	SF-294	04/30
Apr. 1 - Sep. 30	SF-294	10/30
Oct. 1 - Sep. 30	SF-295	10/30
oen i beprov	51 2 70	13/50

Addresses for sending reports:

(a) SF 294 to be submitted to the Contracting Officer to:						
		_				

(6) 51 2	275 to be submitted to.
Element 12	Record Keeping
	- Itotora morphis

(b) SF 295 to be submitted to:

The following is a narration of the types of records the contractor should maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

- **A.** Small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns source lists, guides, and other data identifying such vendors.
- **B.** Organizations contacted in an attempt to locate small, small disadvantaged, womenowned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns sources.
- **C.** On a contract-by-contract basis, records on all subcontract solicitations over \$100,000 which indicate for each solicitation the following information:
 - 1. Whether small business concerns were solicited, and if not, why not;
 - **2.** Whether small disadvantaged business concerns were solicited, and if not, why not;
 - **3.** Whether veteran-owned small business concerns were solicited, and if not, why not;
 - **4.** Whether service-disabled veteran-owned small business concerns were solicited, and if not, why not;
 - **5.** Whether women-owned small business concerns were solicited, and if not, why not;
 - **6.** Whether HUBZone small business concerns were solicited, and if not, why not:
 - 7. Reason for the failure of solicited small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns to receive the subcontract award.

- **D.** Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at procurement conferences and trade fairs.
- **E.** Records to support internal guidance and encouragement provided to buyers through (1) workshops, seminars, training programs, incentive awards; and (2) monitoring of activities to evaluate compliance.
- **F.** On a contract-by-contract basis, records to support subcontract award data including the name, address and business size of each subcontractor. (This item is not required for company or division-wide commercial products plan.)
- **G.** Additional records (list):
- **H.** The offeror is to complete the following table indicating Small Disadvantaged Business (SDB) participation targets proposed which will be incorporated into and made part of any resulting contract:

(1)			
(2)			
(3)			
(4)			
(5)			

Element 13

Submission Information

Subcontracting plan submitted by (contractor):

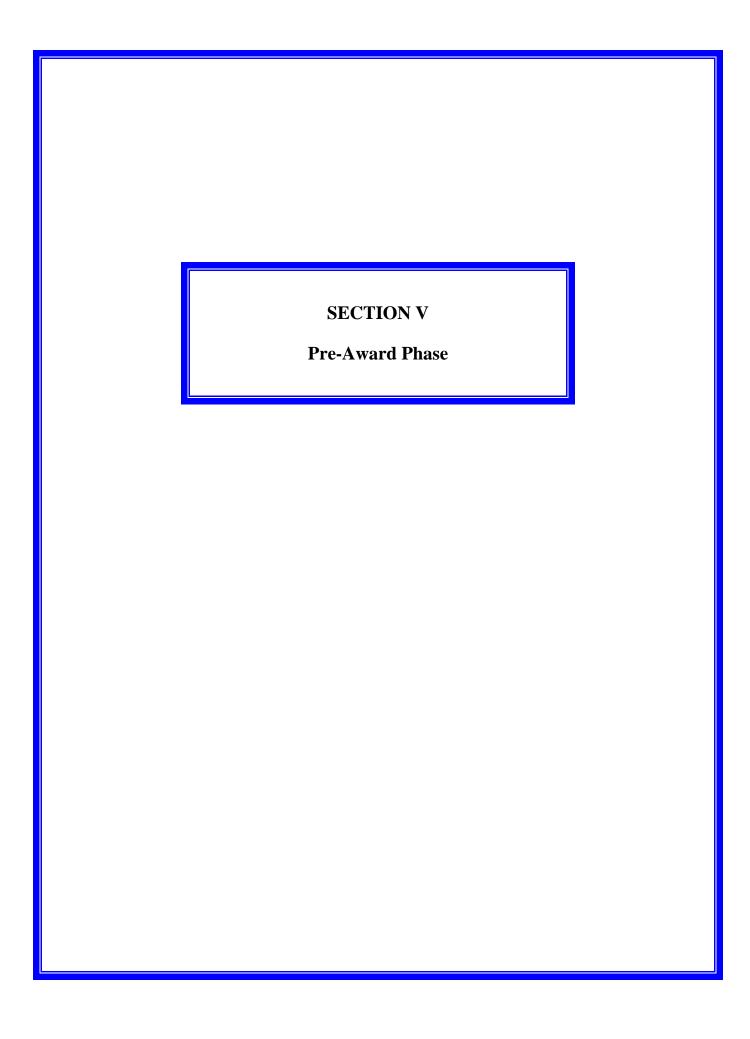
Signature:	
Printed Name:	
Title:	
Date Prepared:	
Telephone:	
Email:	

This Subcontracting Plants The SBS recommends		eviewed	by the Ager	ncy/Depar	tme	nts Small Busines	s Specialist.
□ App	roved		Not Appro	ved [Other Action	
						(Specify)	
Signature:							
Printed Name:							
Title:							
Date:							
Telephone:							
Email:							
This Subcontracting I Representative. The P			•	commend		s Administration Other Action	, Procureme
						(Specify)	
Signature:							
Printed Name:							
Title:							
Date:							
Telephone:							
Email:							

Element 14

Contracting Officer Certification

practicable opportunity Act and referenced in	y for the various si FAR part 19. Il	and have determined tha mall business categories have therefore accepted dated	as defined in the S this plan and here	Small Business
Contracting Officer:				
Appointment of ACC)/COR/COTR:			
I	_, Contracting Off	ficer for solicitation No.		do hereby
appoint				
monitoring for compa ACO/COR/COTR is to collect all reports, SF	liance of the sub b keep me informed 294s and SF 295s	; e-mail:; e-mail:; contracting plan as subdon all aspects of this conforms submitted by the ace, and performance by the second performa	bmitted by the component of the corcontractor, evaluation	ontractor. The ntract and shall
Signature:				



Initial Subcontracting Plan Evaluation

Contracting Officers can only award contracts to prime contractors who are determined to be responsible. A determination of "responsive" applies to the extent to which the offer complies with the solicitation requirements, including the subcontracting elements. Offerors are required to provide assurances that they conform to all responsibility requirements. Such requirements may include, but are not limited to, the offeror's qualifications, financial stability, integrity, and past performance.

For contracts expected to exceed \$500,000 (\$1,000,000 for construction), if an apparently successful offeror fails to negotiate a subcontracting plan acceptable to the Contracting Officer within the time limit prescribed by the Contracting Officer, the offeror will be ineligible for award.[Refer to Best Practice #2]

Best Practice #2

Background

The Transportation Security Agency (TSA), in conjunction with the Department of Transportation OSDBU, initiated an accelerated competition for the management of a program to support and coordinate the fielding of explosives detection equipment as mandated by the Aviation and Transportation Security Act of 2001. Consistent with the urgency of this requirement and the authority cited under a Class Justification for Other Than Full and Open Competition under FAR 6.302-2, a limited competition was performed for selection of the general contractor to assist TSA with this initiative.

Due to the urgency of this requirement, and exercising the authority under the Class Justification, competition for the general contractor was limited to the following companies: Tyco International LTD, TRW Systems, General Dynamics, Raytheon, Boeing Corp., Lockheed Martin, and Siemens.

Best Practice #2 (continued)

Best Practice: The Evaluation and Selection Process"

Four prime contractors submitted offers. Since the solicitation required a commitment to the small, small disadvantaged, women-owned small, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns, a detailed evaluation of the prime contractor's plans and specific approach were necessary to determine the proposal with the highest probability of success. A preliminary report was prepared for the Contracting Officer ranking each proposal using a color-coded evaluation scheme.

Each of the four finalists was asked to provide additional information and proposal clarifications which helped to determine the plan that had the best probability to achieve the desired result, considering the tight timeframe.

At one point the ranking system favored two finalists. However, after the best and final submissions were made, one clear winner emerged. As it turned out, the final analysis of the subcontracting plan was used as the determining factor in selecting a contractor. While all the contractors were committed to the goals, the winning proposal showed a detailed collaborative approach that would result in a predominance of subcontracted work going to small business concerns.

During the evaluation process and in accordance with 15 U.S.C. 637(d)(4)(F)(iii), agencies should ensure that subcontracting goals offered by the apparent successful bidder or offeror are attainable in relation to:

- A. The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;
- B. The pool of eligible subcontractors available to fulfill the subcontracting opportunities;

Section 5: Pre-Award Phase

C. The actual past performance in fulfilling the subcontracting goals of specific prior contracts:

In addition to subcontracting goals, the subcontracting plan should describes the prime contractor's "qualitative" aspects of their small business subcontracting program, such as outreach, equitable opportunity, and the nature of the work to be subcontracted (high-tech vs. administrative or low-tech) (See FAR 52.219-9(d)(3)). This is an opportunity for the Contracting Officer and Small Business Specialist to challenge the contractor when little or none of the high-tech work is subcontracted or if insufficient quantities of work are subcontracted.

The FAR also states that the Contracting Officer must take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. (See FAR 19.705-4(c)).

Contracting Officer's Subcontracting Plan Checklist

This checklist should be used to complete the evaluation of the proposed subcontracting plan. If the plan is missing any of the required items as outlined by the clause at FAR 52.219-9, it is incomplete and may not be accepted by the Contracting Officer.

After the proposed plan is reviewed by the Contracting Officer and the Small Business Specialist, a copy must be submitted to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) for the department or agency.

An acceptable plan must be approved by the Contracting Officer prior to contract award.

Contract Number:			
Contract Value:			
Expiration Date:			
Base Options:			
Principal Product or Service:			
Contractor:			
Address:			
Key 1 Type	of Plan (ch	eck one)	
Individ	ıal	Master	Commercial
Plan	L	Plan	Plan

Key 2	Pl	an Adm	inistrat	tor			
Name:							
Title:							
Address:							
Telephone:							
Telephone.							
Does th	e subco	ontracting	plan incl	ude a des	scription o	f the administrator's	duties?
		YES		NO		OTHER	
						(Specify)	_
Key 3	F	Efforts to Equita		e portuni	ity		
Women-owned	small rvice-d	business isabled ve	(WOSB) teran-ow	, HUBZc	one small l	small disadvantaged business (HUBZone) (SDVOSB) concerns), veteran-owned
Does th	e subco	ontracting	plan incl	ude a des	scription o	f equitable opportuni	ity efforts?
		YES		NO		OTHER	
						(Specify)	_

Key 4

Clause Inclusion and Flow Down

A.		contractor					ll be included in all subcontracts which
		YES		NO			OTHER
					-		
							(Specify)
В.	subcon		the appli	cable th	resho	old (\$50	except small businesses, who receive 00,000 or \$1,000,000 for construction),
		YES		NO			OTHER
					-		(Specify)
Key 5	R	Reporting	g and C	cooper	atio	n	
A.	Did the	contracto	r agree to	submi	t SF-	294 an	nd SF-295 reports?
		YES		NO			OTHER
					-		(Specify)
В.		e contracto	_	_		e in stu d other	udies, surveys, etc. conducted by the rs?
		YES		NO			OTHER
					-		(Specify)



A.	Are rec	ords maintai	ned to	show compl	iance w	vith plan requirements and procedures?
		YES		NO		OTHER
						(Specify)
В.		s of subcont		-		nely payment of amounts due pursuant SB, HUBZone, VOSB, and SDVOSB
		YES		NO		OTHER
						(Specify)
C.		re source lis SB concerns		vendor data	on SB,	SDB, WOSB, HUBZone, VOSB, and
		YES		NO		OTHER
						(Specify)
D.		ne subcontra , HUBZone,				hat will be made to develop SB, SDB, ources?
		YES		NO		OTHER
						(Specify)

	E.	Does th	e subcontra	acting pl	an include	e a descrip	tion of buyer training and monitoring
			YES		NO		OTHER
							(Specify)
	F.		ne subcontr ses, size, ar				al subcontractors (including names,
			YES		NO		OTHER
							(Specify)
•	Key 7		Descripti to Ach		Good Fa ne Plan (orts
	A.	Are the	proposed	subcont	racting go	als reasor	nable?
			YES		NO		OTHER
							(Specify)
	B.	Do the	proposed s	subcontr	acting goa	als meet tl	ne Solicitation requirements?
			YES		NO		OTHER
							(Specify)

C.	Does the su services?	bcontracting p	olan include	e a descri	iption of sub	ocontracted i	tems and	
	☐ YE	cs \square	NO		OTHER			
					(Specify)			
D.	Does the susubcontract	ibcontracting ing goals?	plan descri	be the n	nethod used	to develop	the propos	sed
	☐ YE	cs \square	NO		OTHER			
					(Specify)			
E.	(1). Are ov	verhead and ot	her indirec	t costs in	ncluded in th	ne plan goals	?	
f i i		cs \square	NO		OTHER			
					(Specify)			
<u> </u>	→ (2). If yes,	is there a desc	ription of n	nethod a	llocating the	ese costs to t	he plan?	
	□ YF	es 🗆	NO		OTHER			
					(Specify)			
F.	Does the solicitations	subcontractings?	g plan des	scribe th	ne method	to identify	sources	for
	☐ YE	es 🗆	NO		OTHER			
					(Specify)			

A.	Did the contractor su	ıbmit previous S	5F294s w	with the subcontracting	plan?
 	YES	□ NO		OTHER	
				(Specify)	ı
<u></u>	➤ If yes, have the SF29	94s been review	ed for co	ompliance?	
	☐ YES	□ NO		OTHER	
				(Specify)	•
B.	Reviewed and Discu	ssed by:			
	(1). Department/Ag	ency Small Busi	iness Spe	ecialist:	
	Approved	Not App	proved	Other	
	(2). Small Business	Administration	PCR:		
	Approved	Not App	proved	Other	
	(3.) Other: Agency/	Contracting Off	icers, Pro	ogram Representative:	
	Approved	Not App	proved	Other	
C.	Is there a copy of an	approval letter	for a Coi	mmercial Plan?	
	Yes	No No		Other	N/A

D.	Is there a copy of	a letter approving ad	lministrative elements of	f Master Plan?
	Yes Yes	☐ No	Other	N/A
E.	Does the Master I	Plan includes separate	e goals?	
	Yes	No	Other	N/A
F.		various categories of	nte that the contractor exp f small businesses as su	
	Yes	No No	Other	N/A
G.	Incentives Added	:		
_				
_				
_				
Key 9	Plan App	oroval		
A.		klist review, I		Contracting
	for this subcontract	ation No cting plan:	make the folio	wing determination
	Д Арр	roved No	t Approved	
	Signatu	ıre:		
	Da	ate:		

B.	Based on the checklist review, I	Small
	Business Specialist for Solicitation Nodetermination for this subcontracting plan:	make the following
	Approved Not Approved	
	Signature:	
	Date:	
C.	Based on the checklist review, I	
	following determination for this subcontracting plan:	
	Approved Not Approved	
	Signature:	
	Date:	
	RECOMMENDATION:	
-		
_		
_		
-		

Final Subcontracting Plan Evaluation and Acceptance

Once the checklist has been completed

- The Contracting Officer reviews the plan, discusses it with the Small Business Specialist and either concurs or resubmits the plan to the prime contractor administrator for modifications or changes.
- After the Contracting Officer and the Small Business Specialist accept the plan, the plan is then submitted to the SBA PCR for review and comment.
- The PCR can agree with the plan as submitted or make recommendations to the Contracting Officer regarding the plan's overall compliance with both statutory and regulatory requirements. Should the PCR agree, he or she would sign the plan and return a signed copy to the Contracting Officer and provide an informational copy to the Small Business Specialist for compliance monitoring.

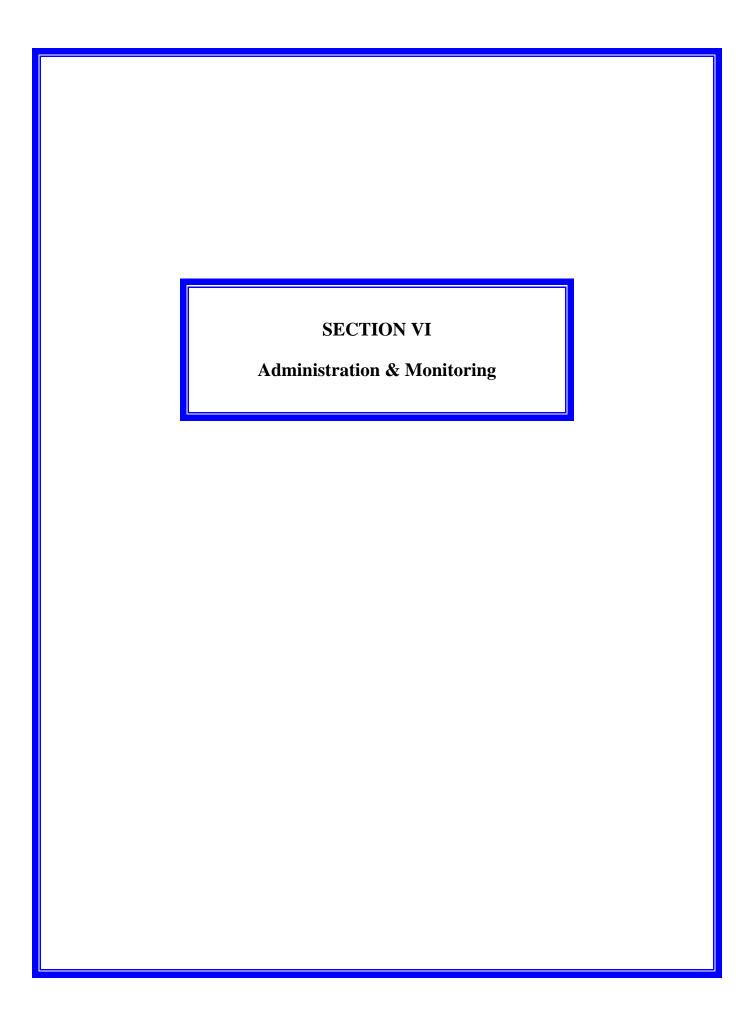
Although the agency's Contracting Officer has the final decision, the Contracting Officer should take advantage of the expertise offered by the OSDBU, Small Business Specialist or the SBA Procurement Center Representative. These individuals have expertise in matters concerning compliance with both FAR Part 19 and the Small Business Act. They can assist in increasing the quality of the plan, and in improving the capabilities of the Contracting Officer in negotiating acceptable subcontracting plans. These individuals are also familiar with the subcontracting monitoring and compliance system, processes and methodologies, and can help develop simple, flexible tools, techniques and procedures that will aid the Contracting Officer in monitoring the subcontracting plan for implementation and compliance.

If the Contracting Officer determines that the plan provides "*the maximum practicable opportunity*" for small business concerns to participate as subcontractors in the performance of the contract, the approved plan will be incorporated as part of the contract.

What if the plan fails to meet the minimum requirements?

A plan may be considered unacceptable if the goals do not meet the minimum requirements. That does not mean the plan cannot be accepted and used by the Contracting Officer.

If the plan fails to meet the minimum required goals, the Contracting Officer may prepare a determination and finding (D & F) statement that explains the circumstances the Contracting Officer believes may have limited goal attainment even though the contractor may have put forth its best efforts. In such circumstances, it may be in the best interests of the Government to accept the plan as provided. A Contracting Officer should seek the technical assistance of an agency or department Small Business Specialist to explore the available options before making this decision. Agencies are encouraged to issue policy guidance that would require the Contracting Officer to obtain approval from an official who is, at least, two levels above the Contracting Officer (within the chain-of-command), as a way of policing this authority.



Subcontracting Plan Administration

The Contracting Officer is ultimately responsible for monitoring and compliance. However, the Contracting Officer may appoint a COTR and delegate limited responsibilities to the Small Business Specialist to assist in the monitoring of the Subcontracting plan to help perform the monitoring and compliance responsibility.

Who can answer contractor questions regarding subcontracting plans?

Contractors should always be encouraged to first discuss any questions about subcontracting plans with the Contracting Officer. If the Contracting Officer has appointed a Small Business Specialist to work on the requirement as a COTR for the purpose of assisting with the monitoring and compliance of the subcontracting plan, the contractor may ask the Small Business Specialist questions.

The Small Business Specialist can assist the Contracting Officer in conducting pre-award evaluation of subcontracting plans and should assist in conducting post-award review and evaluation of contractually required subcontracting plans. The SBS can also help the Contracting Officer develop methods and approaches to motivate prime contractors to increase their level of effort in achieving their subcontracting goals and to establish innovative and creative small business partnerships. Further, the Small Business Specialist can help challenge the status quo by promoting subcontracting efforts with the prime contractor.

Reporting Requirements

Standard Form 294, Subcontracting Report For Individual Contracts. Contractors with individual subcontracting plans are to report to the Contracting Officer twice a year on achievement of subcontracting goals (see Appendix 1). This report is not required for commercial plans. Using the SF 294, reporting periods and due dates are as follows:

Report Period	Form	Due Date
Oct 1 - Mar 31	SF 294	04/30
Apr 1 - Sep 30	SF 294	10/30
Oct 1 - Mar 31	SF 295	10/30

Reports are cumulative and goals are compared against results. A final report is submitted at contract completion. Copies of the report are received, reviewed and kept in the contract file. Once the SF294 is received, the document should be reviewed so that prompt notification to the contractor can be done for corrective action when goals are not being met.

Standard Form 295, Summary Subcontract Report. In this report the contractor summarizes its small business subcontracting performance for the fiscal year (see Appendix 2). The contractor submits one report to each Federal agency, for which it has contracts, summarizing the results of that agency's contracts. The SF295 must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan.

All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.¹⁴

Regulations/Fines Imposed for Failing to Meet Subcontracting Goals

Each contract subject to subcontracting opportunities must contain a clause requiring the prime contractor to pay liquidated damages if the Contracting Officer determines that the contractor has failed to make a good faith effort to comply with the subcontracting requirements. While liquidated damages may be assessed, they are neither common nor easy to apply.

In order to apply liquidated damages, the liquidated damages clause (FAR 52.219-16) needs to be in the contract. FAR 19.701 specifically states that "failure to make a good faith effort to comply with the subcontracting plan means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan." Therefore, failure to meet the goal alone is not a reason to assess liquidated damages.

Finally, the clause at FAR 19.705-4 ©) states that "Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts...". While the law sets standards, we must determine whether the contractor, regarding the particular solicitation, made "a good faith effort."

¹⁴The Office of Management and Budget (OMB) in the process of automating *SF294* and *SF295*, which are the principal forms for subcontract reporting.

Prior to the Contracting Officer's final decision regarding the imposition of liquidated damages and the amount thereof, the contractor must be afforded an opportunity to demonstrate a good faith effort regarding compliance. The Contracting Officer's final decision concerning assessment of liquidated damages is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

Techniques for Subcontracting Plan Compliance Monitoring

Policy

Commitment at the highest levels of the organization is the key to successfully carrying out an aggressive subcontracting program. This commitment must be real and perceived as a win-win situation for all involved. Each agency or department has the authority to institute agency specific policy in regards to small business use. Without superseding statutory and regulatory requirements, tougher guidelines can be instituted. Since implementation of a policy requires close cooperation of all faces of an agency, the guidelines can designate specific individuals to be responsible for ensuring the policy's overall implementation. (refer to Best Practice #3)

Best Practice #3

Background

The Department of Housing and Urban Development (HUD) OSDBU recognizes that a strong small business and disadvantaged business community support HUD's specific missions of job creation, community empowerment and economic revitalization, as well as the general objectives of small business concerns and policies.

..... Best Practice#3 continued

The HUD OSDBU is an aggressive, pro-active office well supported by the Secretary of HUD and therefore capable of pursuing its objectives and supporting the small business and disadvantaged business goals of the administration.

Best Practice: Policy

In 2001, HUD instituted a policy to take affirmative steps to ensure inclusion of small businesses in HUD contracting. The department recognized that use of small business concerns is of vital importance to job growth and the economic strength of the country. HUD policy specifically directs that the following actions be taken by contracting and OSDBU officials on behalf of the agency:

- HUD instituted an agency goal of 50% of contract dollars be awarded to small business:
- Forwarding email notifications to SDBs, 8(a), HUBZone and SDVOSB of any small business set asides;
- OSDBU will develop and the department will enter into written agreement as avenues of communication and support;
- Review of upcoming procurements to determine which solicitations should specify higher small business subcontracting goals; and
- To ensure that the maximum use of SDBs as subcontractors is promoted, HUD solicitations shall include a source selection evaluation factor;

Policy and support from higher levels has been shown in the form of both resources and the authority needed to influence prime contractors to meet their subcontracting goals, and this is cited as a primary source of the vitality and success of the HUD OSDBU office over the past few years.

Under this atmosphere of support, the HUD OSDBU has developed a strong mix of compliance pressures and incentives that have given HUD a strong track record for small business and disadvantaged business utilization.

Partnering

Failure by the prime contractor to carry out its subcontracting plan can constitute a material breach of the contract and, unless remedied, could result in termination. In order to assure that the prime contractor executes the accepted subcontracting plan, the Contracting Officer, in conjunction with the OSDBU, must develop creative ways to monitor subcontracting plan performance.

The Contracting Officer should look to partner with program officials and the OSDBU office to assist them in meeting subcontracting goals for various procurements. Advance acquisition planning and partnering with all stakeholders, i.e., program officials, SBA PCR, OSDBU staff, Small Business Specialists, and prime contractors, is the key to a strong subcontracting program.(refer to Best Practice #4)

Best Practice #4

Background

The Defense Contract Management Agency (DCMA) is responsible for managing and reporting on 998 prime contractors. The small business division (DCMA-SB) covers all Department of Defense contracts except for the US Army Corps of Engineers (USACE) and Naval Facilities Engineering Command (NAVFAC) contracts.

DCMA-SB identifies surveillance of prime contractors as the primary objective in order to ensure that small businesses receive a "maximum practicable opportunity" to participate in prime contractors' subcontracts.

..... Best Practice#4 continued

Best Practice: Partnering

In order to streamline the surveillance process, DCMA teams with SBA to perform joint reviews on some large contractors. This joint effort is conducted under a Memorandum of Understanding (MOU) between DCMA and SBA.

The agreement outlines the procedures for joint compliance reviews of contractors that have contracts with both DOD and civilian agencies. By having the MOU in place, extraneous use of agency resources and prime contractor resources is reduced by avoiding duplicative subcontracting program compliance reviews by multiple agencies.

Outreach

It is recommended that each OSDBU incorporate into its current website a "Small Business Subcontracting Directory" to maximize its availability to the general public. The directory should provide a listing of large prime contractors by state and include the name and telephone number of the Small Business Liaison Officer at each company, along with a brief description of the company's products or services and the areas in which the company is seeking subcontractors for performance on a particular contract.

Both government and business entities have begun to recognize the significance of accessibility to electronic documents. Therefore, it is also recommended that the Contracting Officer submit the subcontracting goal portion of the prime contractor's approved subcontracting plan to the OSDBU to be posted on the web as a feature file in Portable Document Format (PDF). This file type provides an easy way to view and print documents and will make information more accessible to the small business community. Posting the subcontracting plan on the Internet may encourage the prime to meet and even exceed its subcontracting goals.(refer to Best Practice #5)

Best Practice #5

Background

The Department of Housing and Urban Development (HUD) OSDBU recognizes that a strong disadvantaged small business and disadvantaged business community support HUD's specific missions of job creation, community empowerment and economic revitalization, as well as the general objectives of small business and disadvantaged business policies.

Best Practice: Outreach and Subcontracting Directories

HUD OSDBU has a wide variety of innovative and pro-active outreach activities, including weekly open-house meetings with prime contractors providing opportunity to create relationships with the HUD OSDBU office and to facilitate relationships between primes and subs. The OSDBU also holds similar open houses with small firms on a weekly basis. These meetings were cited as not only advantageous to primes and small businesses, but as essential in communicating to prime contractors that HUD is serious about its commitment to small disadvantaged business utilization.

Beyond these weekly meetings, HUD OSDBU holds small business conferences in states throughout the country. In 2003, HUD OSDBU conferences were held in 40 states, and they plan to reach the remaining states this year.

Regional HUD offices also facilitate Business Economic Development Days (BEDD), which can include workshops and classes. Activities such as these by regional offices reflect a commitment to disadvantaged small businesses and disadvantaged businesses that extends beyond the HUD OSDBU itself to all HUD activities.

Monitoring Compliance on Large Dollar Value Contracts

For some Federal contracting entities, awarding multi-billion dollar contracts to large prime contractors is unavoidable. Therefore, monitoring the subcontracting plan for compliance must be a little more creative and stringent. The Contracting Officer, Small Business Specialist, and the OSDBU must partner together to develop a monitoring process to be used for each type of large dollar value contract.(refer to Best Practices #6 and #7)

Remember, if additional reporting requirements are going to be required, ensure that the requirements are clearly outlined in the solicitation/RFP. Additionally, if a prime contractor is not showing a "good faith effort" in meeting the subcontracting goals as outlined in the approved subcontracting plan, the Contracting Officer has the ability to institute more stringent reporting requirements to ensure compliance with the approved subcontracting plan.

The following are examples of more stringent reporting requirements that can be used to monitor high dollar contracts when the prime contractor is not showing a "good faith effort:"

- Submittals of Standard Form 294 at more frequent intervals;
- Monthly Reporting to include detailed subcontractor award data; and
- Detailed documentation outlining "good faith efforts."

Best Practice #6

Background

The Department of Energy's (DOE) Office of Economic Impact and Diversity (ED) works with each of DOE's 27 program entities to meet the Department's small business contracting goals. Given the unique nature of DOE's mission, it is estimated that nearly 90% of DOE's budget goes to prime contractors – of which 60-70% is then subcontracted to other firms.

.... Best Practice#6 continued

DOE's ED actively works to promote utilization of small business, disadvantaged, and woman-owned firms through the following means: access to information, a variety of outreach programs, subcontracting requirements, and subcontract monitoring.

Best Practice: Mentor Protégé Subcontracting Policies

ED has taken SBA's mentor protégé program guidelines one step further by requiring small businesses involved in joint ventures to be responsible for completing, at a minimum, 25% of the work. This program standard is more specific than SBA's requirement that small businesses involved in mentor protégé ventures complete a "significant" portion of the work. By quantifying the standard, ED defined the program's parameters, thereby discouraging program abuse while promoting the advancement of small business opportunities.

Best Practice: Subcontracting Monitoring and Compliance

This year, ED has initiated a subcontractor auditing program in an effort to cut back on subcontracting fraud and to insure that the small business subcontracting objectives are being met. The program randomly selects a sample of prime contractors and follows up with them and their small business subcontractors to insure that 1) the information reported to DOE on Standard Forms 295 and 294 is accurate, and 2) they are effectively working to fulfill their commitments as stated in their subcontracting plans. In the future, the program will include field visits to subcontractors and onsite review of subcontractor documentation.

Best Practice #7

Background

The Transportation Security Agency (TSA), in conjunction with the Department of Transportation OSDBU, initiated an accelerated competition for the management of a program to support and coordinate the fielding of explosives detection equipment as mandated by the Aviation and Transportation Security Act of 2001. Consistent with the urgency of this requirement and the authority cited under a Class Justification for Other Than Full and Open Competition under FAR 6.302-2, a limited competition was performed for selection of the general contractor to assist TSA with this initiative.

Due to the urgency of this requirement, and exercising the authority under the Class Justification, competition for the general contractor was limited to the following companies: Tyco International LTD, TRW Systems, General Dynamics, Raytheon, Boeing Corp., Lockheed Martin, and Siemens.

Best Practice: Monitoring

Once the prime contractor was selected, an initial meeting with the team leader and the OSDBU Director took place. Among the various topics discussed was a cooperative strategy to identify and retain quality subcontractors to help the prime accomplish its mission.

The prime contractor was briefed on how to report subcontractor achievement using a detailed monthly report form developed by OSDBU. The form set forth minimum reporting criteria, including detailed information on the extent of their involvement. The form also included information on actual payments to subcontractors to ensure that the prime was carrying through on their commitment. Additionally, spot checks of the information submitted against the CCR and ProNet information were conducted periodically.

..... Best Practice#7 continued

In order to identify qualified small businesses as possible subcontractors, OSDBU developed a comprehensive six cities outreach campaign involving the prime and their key partners.

The prime contractor was successful in both meeting the deployment deadline, and substantially exceeding the subcontracting goals. Subcontracting figures available through September 30, 2003 show that TSA prime contractors awarded more than \$675 million to small businesses or about 50% of the total subcontracted dollars. A further breakdown of this figure shows \$133 million going to small disadvantaged businesses, \$34 million to women-owned businesses, and \$62 million going to veterans and service-disabled veterans. These achievements are remarkable considering the rigorous logistical and security requirements of the tasks.

To assist TSA and the prime contractors in meeting their subcontracting goals, the OSDBU undertook a number of actions including:

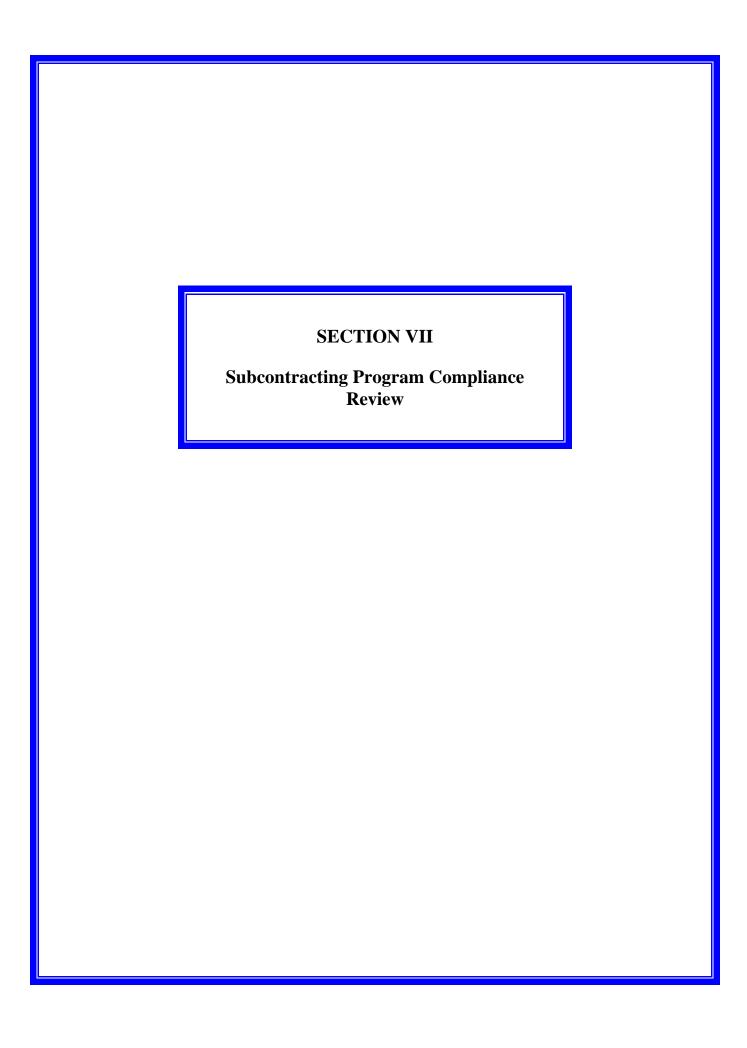
- Developing subcontracting evaluation criteria to measure small business commitment and incorporating into the selection process of key prime contracts;
- Setting forth in the solicitation the minimum subcontracting levels required by the government;
- Working closely with prime contractors in identifying key small business partners;
- Working closely with the SBA to spread the word on subcontracting opportunities, and posting announcement in their sub net;
- ☐ Issuing notice of sources sought and creating a database of potential subcontractors which was provided to prime contractors;
- Participating in the evaluation team to ensure that subcontracting efforts reflected maximum commitment to small business particularly at the first tier level;

..... Best Practice#7 continued Posting relevant contact information and links to specific opportunities fact sheet on website subcontracting directory; Embarking on a successful six city outreach tour with the major primes and their large subcontractors; Monitoring performance through detailed monthly reports to ensure adherence with established goals and commitments; and Setting broad guidelines, making recommendations, and providing support to the Small Business Liaison person to ensure continuity of efforts.

For a discussion of subcontracting "Best Practices" within DoD, refer to:

http://www.dcma.mil/DCMAHQ/dcma-sb/bestpractices.htm.

This web site details a series of strategies implemented by DoD to increase the representation of small-disadvantaged business in the contracting process, including the appointment of a business advocate, technology utilization for small-business outreach, and awards to SDBs that were not low bidders.



Small Business Program Compliance Review (SBPCR)

If a compliance review of a prime contractor's Small Business Program is deemed necessary, the following process, as outlined in this section, Section VII, of the Subcontracting Plan Compliance Monitoring Guide will be used. The Contracting Officer must notify the prime contractor of the upcoming review.

Note: This Section VII was taken directly from subcontracting guidance administered by the Small Business Administration (SBA). If additional guidance is needed in order to conduct a compliance review, please contact a SBA Commercial Market Representative (CMR). To obtain SBA's nationwide listing of CMRs, go to http://www.sba.gov/GC/http://www.sba.gov/GC/cmr.html.

Types of Small Business Program Compliance Reviews

The SBPCR is one of your most important responsibilities. Properly conducted, the review can have a significant impact on the way a large contractor administers its small business program. In addition, when the review is objective, comprehensive and fair, it can greatly enhance your credibility. SBA and DCMA reviews are often the only formal evaluation of a contractor's compliance with its subcontracting plans.

There are several types of SBPCRs:

On-Site Reviews;

- Reviews conducted individually
- Joint Reviews with DCMA (see //www.dcma.gov.)
- Joint Reviews with another agency
- ☐ Tandem Team Reviews;
- Off-Site Reviews; and
- □ Self-Evaluations.

Section 7: Subcontracting Program Compliance Review

The latter three review types, *Tandem Team Reviews*, *Off-Site Reviews*, and *Self-Evaluations* are SBPCR options. They enable you to perform SBPCRs on contractors that may have received less priority in the past due to travel and time constraints. However, Off-Site SBPCR and Self-Evaluations are not SBA's preferred methods and should only be accomplished when the parameters established for these types of reviews are met.

You should spend the time necessary at the contractor's facility in order to accomplish the mandatory elements of the review. Generally, you should be able to accomplish the review in a one-day period. If you anticipate your visit requiring more time, you may wish to obtain more of the information ahead of time to expedite the review.

In some instances, the LPC may be willing to prepare certain information or even the entire binder ahead of the review date. If so, this will allow you to complete some or most of the Small Business Program Compliance Review Checklist prior to your physical visit. This may help you to focus on problem areas during the review and shorten the length of your visit.¹⁵

Preparing for the SBPCR

The preparation for a SBPCR is extremely important (notify SBA Government Contracting Subcontract Manager first). At least 30 days prior to the review, you should contact the prime contractor's LPC's Small Business Liaison Officer (SBLO) and establish a review period that is mutually agreeable. If this is a joint review, you should also coordinate this date with SBA or DCMA. You may wish to also coordinate this date with other federal agencies, such as the Army Corps of Engineers, that perform their own subcontracting plan reviews so that the contractor can consolidate these reviews into one day. You may also wish to invite a Contracting Officer if you believe the contractor is failing to make a good faith effort to meet the subcontracting plan requirements on any of its contracts.

Your verbal agreement of the date should immediately be followed by a formal notification letter addressed to the SBLO that includes the Preparation Checklist. You may add any additional items to the letter that may be appropriate to fit the requirements of a particular case. Those who wish to use an alternate version which combines the Preparation Checklist and Small Business Program Compliance Review Checklist may contact the Subcontract Program Manager in SBA Headquarters for permission. You may use your discretion whether to send it Certified or First Class Mail. You may also send it via email with a hard copy mailed First Class or Certified the same day. As stated in the sample letter, you should ask the contractor to provide you with three listings, at least one week prior to the review:

¹⁵Your agency/department may be required to enter into a SBPCR Memorandum-of-Agreement with SBA. Contact SBA Government Contracting at **www.sba.gov**.

A list of all subcontracts awards to small businesses (separated by small business subset groups) of any dollar value issued within the past year;
A list of all subcontract awards to large businesses over \$100,000 related to their federal contracts and issued within the past year; and

A list of any blanket purchasing agreements, corporate-wide purchasing agreements, or similar agreements that were established during the past year by this company (or division). Any agreement that requires a particular large business to be used for repetitive purchases should be included in the listing (i.e., a corporate purchasing agreement with Staples for Office Supplies).

The conduct of the review is critical. Since the reputation of the Agency is at stake, it is important to act in a professional manner at all times. In addition, you should be thoroughly familiar with the Agency's Standards of Conduct and participate in annual training for this purpose, if offered and available in your area. You should contact your Standards of Conduct Counselor immediately if any issues arise that require further guidance.

Before starting the review, you should obtain as much background information as possible from the contractor's file and from the Subcontracting Computer System. At a minimum, this should include the following:

General background on the contractor including the history and size of the company, its major product lines, and its customers;
The contractor's most recent SF 294 reports;
Any SF 294 report for a contract that has completed within the past 12 months;
Current year and historical SF 295 data for the previous 5 years;
Work papers from the last SBPCR or Follow-Up Review, and the last Performance Review;
A list of any sources referred to the contractor since the last review; and
A list of the recommendations made by SBA during the last SBPCR or Follow-Up Review

As stated in the notification letter and Preparation Checklist, several documents are required from the LPC at least one week prior to the scheduled review date. These documents will allow you to provide the LPC with advance notice of the purchase orders and size self-certifications that you have

selected as a random sampling.

Conducting the Entrance Conference

You may conduct an Entrance Briefing with the LPC's SBLO, Director of Purchasing, and other personnel on the first day of the review if desired. The briefing should encompass the objectives of the review, how it will be conducted, and how coordination between you and the contractor will be handled. You should stress the objectivity of the review and emphasize the potential value of it to the company (i.e., identification of program weaknesses and suggestions for corrective action). You may also want to consider conducting the Entrance Briefing via teleconference prior to your arrival to allow you more time during the day of the review.

You may waive the Entrance Briefing if the SBLO and the Director of Purchasing are the same individuals who held these positions during the last review.

You may use the following outline as a rough guide for your Entrance Briefing. Bear in mind, though, that each review is unique, and specific circumstances may necessitate modifying or expanding the topics listed below:

Introductions: team members and prime contractor personnel in attendance;
Brief statement about SBA (mission of the Agency, etc.);
SBA's role in subcontracting (pre-award plan reviews, post-award compliance reviews, etc.);
Purpose of this review (to assess contractor's compliance with statutes and regulations, to make recommendations for improvement, etc.);
Scope of the review (documentation to be reviewed and personnel to be interviewed);
Coordination and logistics (prime contractor's point-of-contact for the review, room arrangements, security considerations, parking place, rest rooms, etc.);
Schedule (tour of the facility (optional); anticipated beginning and ending time, and time for the exit briefing);
Documentation needed to get started (organizational charts, purchase order journal, etc.).

Section 7: Subcontracting Program Compliance Review

Covering the Elements of the Checklist

The Seven Elements of a SBPCR. You must use the SBPCR Checklist in Appendix 3 as a work paper for completing the seven elements of a SBPCR. The seven elements are:

- Sourcing;
- □ Validation of the SF 294 and 295 Reports;
- ☐ Trend Analysis;
- Overall Evaluation of the Contractor's Subcontracting Program;
 - Management's Support of the Program
 - Training
 - Outreach
 - Assistance to Small Businesses
 - Success Stories
- Subcontracting Plan Goal Analysis;
- Sampling of Subcontracts Issued to Large Business; and
- Follow-up on SBA's Prior Recommendations.



Sourcing

You may be able to help an LPC to identify resources to locate small business concerns for its current or future contracts. You should inquire if there are any current jobs for which the LPC is not meeting its goals and in what commodity and category (i.e. SDB) can SBA assists the LPC in finding sources. Discuss how the contractor looks for new suppliers and how suppliers are qualified. In some types of contracts, the LPC will have to identify upfront all of its suppliers/ subcontractors in its proposal. In others, the contractor can continually seek new suppliers throughout the contract. Encourage the contractor to actively use *CCR* and SUB-*Net*. Buyers should also be trained on these resource tools. Ask if there areas in which the SBA can be on the lookout for small businesses to refer to the contractor.

You should encourage the SBLO to establish tools so that it has an effective means of finding and utilizing new suppliers. As discussed earlier, you should not be overly aggressive in performing searches for new suppliers on the contractor's behalf. You should discuss the appropriate tools that you are aware of with the contractor (i.e. CCR, SUB-*Net*, local Chambers of Commerce, local and national trade organizations, local and national trade fairs). Time permitting, you may wish to conduct a *CCR* and SUB-*Net* demonstration during the SBPCR, or schedule a SOAR visit at a later date.

If you have referred any sources to the contractor since your last visit, you may also follow up on whether they were utilized. If so, you should report these to your Area Director on your Monthly Report as a Success Story.



Validation of the SF 294/SF 295 Reports

Validity of the contractor's methodology for preparing the SF 294 and SF 295 is a very important part of the review. Large contractors found to be deficient on this element must be graded *Marginal* or *Unacceptable* regardless of the outcome of the other review elements (**refer to rating system on page 84**). In extreme cases, you may determine that there is no point in continuing with the review and simply grade the company *Unacceptable* based upon this initial review element. However, if the contractor believed its system for completing the reports was acceptable and is making a good faith effort to comply with the remaining elements of its subcontracting plan(s), the review should continue. In this case, the errors on the reports would just be pointed out as a major finding.

This validation is intended to ensure that the small businesses and small businesses in every subset group are actually receiving the subcontracts claimed by the large contractor. It is also very important that the contractor is only counting companies as SDBs and HUBZone small business concerns that are certified by SBA. The procedure for validation and verification is as follows:

Prior to the review date, you should have randomly selected about twenty small businesses that the contractor has awarded a subcontract to in the last year (see 5-b-1). Make sure that your selection contains a cross section of small businesses and small businesses from every one of the subset categories. You may wish to select the small businesses that were awarded the largest aggregate dollar amounts since these companies have the largest impact on the numbers reported on the SF 294 and SF 295. You should also be certain that your sampling contains several SDB and HUBZone firms. Prior to the review, you may verify that the SDB and HUBZone firms in your sampling are certified by SBA in SBA's CCR database.

۵	During the review, the contractor should be able to produce a written size self-certification for each small business you selected. These written certifications should be cross-checked with the way the company has classified the firm in its purchasing log/supplier database.
	The size certification form should be checked to validate that the form is gathering the size information correctly. For instance, when are suppliers required to complete the size certification? Does it contain all the small business and subset categories? If it contains definitions, are they correct? Does the company verify SDB and HUBZone firms in <i>CCR</i> ? Does the form contain the required Penalty for False Misrepresentation?
0	Due to an advance in technology, some LPCs are gathering size certifications electronically (via its Website or email). As long as the LPC is able to print or show you the electronic certification, this is acceptable. In most cases, the contractor should be able to print out the electronic certification for the companies in your random sampling. This does not mean that it is acceptable for an LPC to utilize the services of an outside company to classify its vendors without written size self-certifications.
<u> </u>	You should make sure that the company is counting a subcontractor in all the categories it qualifies for. For instance, the dollars awarded to a small woman-owned, SBA certified HUBZone firm can be counted in three categories: small, small women-owned, and small HUBZone.
	You should ask the contractor to explain the method used to prepare the SF 294 and 295 for the most recent period. You should examine how subcontracts awarded during that time period were tallied for the reports and verify that the totals in each category match the corresponding line on the most recent SF 294 and SF 295. In most cases, this will be computerized process so you should be verifying the parameters of the search that was used.
	You should verify not only the dollars, but also the percentages reported by the contractor on the SF 294 and SF 295.
	You should also review the contractor's formula for applying indirect costs.
a	In rare cases you may need to do more to verify the subcontracting dollars claimed by the large contractor. If you have suspicions regarding the written size self- certifications or purchase orders placed, you may contact the small businesses directly by letter, telephone, e-mail, or a personal visit.

- You should verify that the CEO is signing the SF 295 report. You should make sure that any expenses that the contractor is excluding from the SF 294 and SF 295 reports are correct. All subcontracts must be included. "Subcontracts" are defined in FAR Part 19.701 as "any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for the performance of the contract, contract modification, or subcontract." Typically contractors eliminate expenses that do not meet this definition such as taxes, landing fees, employee reimbursements, etc. You should also verify that the contractor is including all transactions, whether called purchase orders, subcontracts, agreements, or another term, on its reports. Some contractors, such as construction companies, differentiate between subcontracts and purchase orders. It should be clarified that subcontracts means all transactions to supply the goods or services required for the performance of the contract. Many contractors are now using purchasing/credit cards. Many of these transactions meet the definition of a subcontract and must be included in the reports. Note that purchasing card transactions are usually indirect expenses so a company only has to include a prorated portion of these on its SF 294 Report(s) (only if it stated in its subcontracting plan that the goals included indirect costs). A prorated portion of indirect costs must be included on the SF 295 Report. If the procedure for auditing the SF 295, as described in paragraphs 5-4b(1) through (5) above, reveals no problems or deficiencies, you may proceed directly with the Five-Year Trend Analysis.
- You pass or fail the contractor on this element of the review. If there are deficiencies, determine their level of seriousness as follows:
 - If minor deficiencies are identified (e.g., a small error of arithmetic in computing the percentages), you should proceed with the review. You should make note of the deficiency in the final report and in your recommendations;
 - If <u>significant</u> deficiencies are identified (e.g., subcontracts to small business are unsupported), but the error appears to be careless rather than deliberate, you should proceed with the review. However, you may not rate the contractor higher than *Marginal* until the contractor remedies the deficiencies. If the deficiencies can be remedied <u>during</u> the review (or within

- a few days after and documentation is shared with you), you may rate the company higher.
- If <u>significant</u> deficiencies are identified and appear to be <u>deliberate</u>, you may cancel the remaining portions of the review and rate the contractor *Unacceptable*. Upon returning to the office, you should prepare a letter to the large contractor outlining the reasons for this determination and request remedial action. (Also, see Paragraph 5-8(e), Material Breach of Contract, to be considered in extreme cases.) If you believe the deficiency constitutes fraud, you must refer the matter to the Inspector General.



Trend Analysis

The source of the data for this report is the year-end SF 295 for the contractor's past five years (or as many years as available). Before performing the analysis, you should examine the company's methodology for preparing the SF 295 as described in Paragraph 5-4(c). You should generate a Five-Year Trend table. The following factors should be considered in the analysis:

- As a general rule, percentages are more meaningful than dollar amounts. Accordingly, you should use percentages rather than dollars to formulate your conclusions about the trend:
- The trend should reflect data from the five most recently <u>completed</u> years. Do not use data from a mid-year SF 295; and
- Percentages that have deteriorated, fluctuated, or remained stagnant must be explained by the contractor. In some cases, the explanation may be that the contractor's product mix has changed, its number of contracts is erratic, divisions were acquired or sold, or product lines more conducive to subcontracts with small business have ended. Upon investigation, a negative trend may or may not be justified.

Since Section 8(d) of the Small Business Act (15 U.S.C. Section 637(d)) uses the language "maximum practicable opportunity," which is subject to considerable interpretation, you must exercise careful judgment in formulating any conclusions. The key point here is that the trend should be positive; or, if it is negative, there should be sound rationale to explain why.

After considering any special circumstances that may explain apparent poor performance, you must decide whether the contractor has provided maximum practicable opportunities to SBs, SDBs, WOSBs, HUBZone SBs, VOSBs, and SD/VOSBs as required by the law.

You should discuss with the contractor any purchasing procedures that may be causing a negative or decreasing trend, such as long term agreements with large businesses, reducing the supplier database and not protecting the small businesses listed, mandatory corporate-wide agreements with large businesses, and the possible minimization of these negative purchasing decisions.

You should also verify that the contractor has submitted a listing of subcontract awards to SDBs, by NAICS code, with its most recent SF 295. This is applicable to all contractors, regardless of what type of subcontracting plan is used.



Overall Evaluation of the Contractor's Subcontracting Program

The questions in Section D of the SBPCR Checklist will lead you through an investigation of the contractor's internal dedication to the small business program. Findings should be discussed in your narrative report.

Most of the questions in Section D can be answered and/or documentation can be provided by the SBLO. However, you may wish to also interview key personnel. The two organizational charts requested in the notification letter will be useful in determining which individuals to select for interviews. Besides the SBLO, you may wish to interview the Director of Purchasing, the Corporate Competition Advocate, the Manager of Engineering Services, and several of the Purchasing Agents and Buyers.

Such discussions should result in a better understanding of the contractor's program. For instance, interviewing a buyer will give you a good idea of how effective training has been and what kind of emphasis he or she believes management places on the small business program.

The Small Business Program should be one that is supported by the President/CEO of the company. The program's success is often dependent on this individual's direct support of the program. The CEO is required to sign the SF 295. SBA also recommends that the CEO emphasize his/her support with a policy letter supporting the program. The CEO should be kept abreast of the status of the subcontracting plan goal accomplishments on a periodic basis. The SBLO should be represented on the organizational chart as someone who is able to influence purchasing decisions. If the SBLO is not the same person as the one named in the subcontracting plans, then the CEO or President should support his or her position with a letter of designation.

The contractor's participation in many of the programs such as MED Week, the Mentor-Protégé Program, etc. is strictly voluntary. Participation in these activities does demonstrate the contractor's level of outreach efforts; and extra-ordinary efforts in these activities are commonly used to attain a rating of *Highly Successful* or *Outstanding*, provided that the contractor is also meeting its



Subcontracting Plan Goal Analysis

The objective of examining the company's contracts containing subcontracting plans is to determine actual achievements against the goals for small, small disadvantaged, women-owned small, small HUBZone, small veteran-owned, and small service-disabled veteran-owned businesses, as contained in the corresponding subcontracting plans.

- As explained in Paragraph 5-4(c), before performing the analysis, you should examine the company's methodology for preparing the SF 294 and resolve any questions before proceeding. A company may base its subcontracting awards on subcontract payments or subcontracts issued as long as this method is used uniformly throughout the contract. Both are acceptable methods.
- Your first step is to decide whether SBA Form 1907, SBA Form 1907A, or SBA Form 1907B is applicable. You should use SBA Form 1907 if the company has individual plans (or a master plan). You should use SBA Form 1907B if the company is a participant in the *DOD Test Program for Comprehensive Subcontracting Plans*. You should use SBA Form 1907C if the company has a Commercial Subcontracting Plan. If a company has a combination of types of subcontracting plans, you should use all applicable forms.
- You should evaluate whether a contractor met its goal by looking at the percentage goal, rather than the dollar goal.
- To complete SBA Form 1907, you should obtain the most recent SF 294 report for each contract. You may wish to use a separate SBA Form 1907 for current contracts, and contracts that have completed within the past 12 months. You should transcribe the goals and achievements from the SF 294 report onto SBA Form 1907.
- You should also perform a check to make sure that the subcontracting plan dollar and percentage goals stated on the SF 294 agree with the dollar and percentage goals stated in the subcontracting plan. For contracts that have been modified, you must also make sure that the original goals have been revised to reflect the modification.
- To complete SBA Form 1907B, you should obtain a copy of the contractor's approved Comprehensive Subcontracting Plan for the most recently completed year.

You should list the goals from this plan on SBA Form 1907B. You should then obtain a copy of the contractor's SF 295 report for the same year, and enter the contractor's achievements on the form. The Subcontracting Plan will also contain goals for two target industries. Since the SF 295 does not contain the actual achievements for the target industries, you should request this from the contractor.

- To complete SBA Form 1907C, you should obtain a copy of the contractor's approved Commercial Subcontracting Plan for the most recently completed year. Note that Commercial Plans are based on the contractor's year rather than the Federal Government's fiscal year. You should list the goals from this plan on SBA Form 1907C. You should then obtain a copy of the contractor's SF 295 report for the same year, and enter the contractor's achievements on SBA Form 1907C.
- You do not need to address whether a contractor is meeting its Historically Black College or University or Minority Institution (HBCU/MI) goals. While some DoD, NASA, and Coast Guard subcontracting plans may contain HBCU/MI goals, these are not small businesses and SBA does not monitor this goal category.
- The contractor should be able to fully explain why it is not meeting any of its goals, on any of its contracts. The contractor should be documenting its SF 294 report to fully explain any goal shortfalls. You may also want to encourage the contractor to establish written action plans for any goal that they are not meeting. This is a good way to display "good faith effort."
- You should complete Section E of the SBPCR Checklist and discuss the results in the narrative section provided. You must make a determination if the results on the SBA Form 1907, or 1907A, or 1907B, indicate that the contractor is utilizing small businesses and the subset groups to the maximum extent practicable. You should also discuss in the narrative section provided how subcontracting plan goals are formulated. You should analyze the goals set and achievements made to determine if the goals are realistic, yet challenging. The SBLO should be an integral part of the subcontracting plan goal-setting process.
- If the company is operating under a Master Plan, Commercial Subcontracting Plan, or DOD Comprehensive Subcontracting Plan, you should make sure that the current plan was submitted in a timely manner, has been properly approved, and has not expired.
- Since this element of the review has a big impact on the contractor's SBPCR rating, you should be certain that your calculations are correct.



Subcontracts Issued to Large Businesses

- The subcontract analysis serves multiple purposes:
 - To recognize what major components the contractor subcontracts to produce its product/service to the Federal government;
 - To make certain that the contractor is soliciting SBs, SDBs, WOSBs, HUBZone SBs, VOSBs, and SD/VOSBs in larger acquisitions;
 - To assure that the contractor is considering small business sources when blanket purchase agreements are established;
 - To assure that the contractor is documenting its files adequately in cases where it does not solicit or make award to a SB, SDB, WOSB, HUBZone SB, VOSB, or SD/VOSB; and
 - To determine, in cases where the subcontract is more than \$500,000 and is issued to another large business, whether the contractor is requiring that subcontractor to submit a subcontracting plan with goals for SB, SDB, WOSB, HUBZone SB, VOSB, and SD/VOSB (the flow-down provision). In construction of a public facility, the threshold for this requirement is \$1,000,000 rather than \$500,000.
- Your letter to the contractor that confirms your review date asks the contractor to submit two listings of awards to large businesses to you at least a week prior to your review date. From the listing of subcontracts over \$100,000 awarded to large businesses over the past year, you should select a number of subcontracts to review, as follows:
 - Your sample must be unbiased and produce the same general results that would be derived from examining all subcontract files;
 - If possible, you should include subcontracts in both the product and non-product areas;
 - You should review a total of ten purchase orders over \$100,000 issued to large businesses including, if possible, at least six over \$500,000 (or, in construction of a public facility, as many as practical over \$1,000,000); and
 - You should review at least five of the blanket purchase orders established.

- When examining the blanket purchase agreements, you should make sure that the contractor considered small business sources. If the blanket purchasing agreement was expected to exceed \$100,000, the contractor may document the original file that established the agreement with a written justification that meets the requirements of FAR 52.219-9(d)(11)(iii). If the original blanket purchase order file does not contain a justification, then each individual order that exceeds \$100,000 must contain its own justification. This can be documented on SBA Form 1908.
- For purchase orders over \$100,000, you must determine the adequacy of records called for in the Federal Acquisition Regulations (FAR), 52.219-9(d)(11)(iii), which reads—"Records on each subcontract solicitation resulting in an award of more than \$100,000," indicating:
 - Whether small business concerns were solicited and, if not, why not;
 - Whether veteran-owned small business concerns were solicited and, if not, why not;
 - Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - Whether HUBZone small business concerns were solicited and, if not, why not;
 - Whether small disadvantaged business concerns were solicited and, if not, why not;
 - Whether women-owned small business concerns were solicited and, if not, why not; and
 - If applicable, the reason award was not made to a small business concern.
- For purchase orders of more than \$500,000 (more than \$1,000,000 in the construction of a public facility) issued to other large businesses, you must determine whether the contractor obtained subcontracting plans from its subcontractors (the flow-down provision). Such plans should be examined to be certain that they contain the six elements required in a subcontracting plan (see paragraph 3-1a). If there is no lower tier subcontracting going to take place, the contractor should obtain a written statement from the subcontractor and issue a written waiver to the subcontracting plan. You should validate that the contractor is receiving SF 294 reports from the subcontractor and monitoring these reports for accuracy and goal attainment.

- In accordance with FAR 52.212-5(e) and 52.244-6(c), a contractor does not currently have to flow down FAR 52.219-8 and FAR 52.219-9 when it is subcontracting for a "commercial item." Therefore a flow-down plan is not required from these subcontractors. However, you may wish to inquire as to the nature of the subcontracts to validate that the subcontract was in fact for a commercial item. SBA has submitted a formal case to the FAR Council that addresses this issue and will, if approved, require flow-down for subcontracts for commercial items.
- Some large contractors accept a statement or certificate from their subcontractors stating that they have a subcontracting plan in place. The statement is commonly called a "Certificate of Compliance" or "Certificate in Lieu of a Plan." According to current guidelines by the Office of Federal Procurement Policy (OFPP)—this is not acceptable. Large contractors are required to describe their procedures for reviewing, approving, and monitoring their subcontractors' compliance with subcontracting plans and SF 294s. Copies of subcontractor's subcontracting plans must be retained by the large contractor until completion of the subcontract. A "Certificate of Compliance" or statement from the subcontractor that it has a subcontracting plan does not satisfy this requirement. A contractor cannot approve or monitor a plan it has never seen.
- If the contractor accepts the "Certificate of Compliance" it should be addressed in the final report. The contractor should <u>not</u> receive an *Outstanding* rating, even if all other elements of the review are outstanding.
- Note that the flow-down requirement (FAR 19.704(a)(9) and 52.219-9(d)(9)) is enforced as follows: (a) If the subcontractor is a participant in DOD's *Test Program for Comprehensive Subcontracting Plans*, the prime contractor may satisfy this requirement by verifying that the subcontractor is a current participant and documenting the file accordingly; ¹⁶ (b) if the subcontractor has a *Commercial Plan* approved by a Government agency for the current year, the prime contractor may satisfy this requirement by obtaining a hard copy of the *Commercial Plan* with the signature of the approving official; or (c) if the subcontractor is <u>not</u> a participant in DOD's *Test Program for Comprehensive Subcontracting Plans* and does <u>not</u> have a *Commercial Plan*, the prime contractor must obtain an *individual contract plan* (FAR 19.701) for the instant subcontract and retain it in the contract file with the other contract documents.
- By definition (see FAR Clause 52.219-9(g)), a Commercial Subcontracting Plan relates to the contractor's production for both commercial and noncommercial products, rather than solely to the Government contract. Accordingly, you may

¹⁶A list of participants may be found on the Internet at http://www.acq.osd.mil/sadbu/csp/procurement.html or by contacting the Program Manager in the DOD OSD OSDBU at (703) 588-8631 or (703) 588-8636.

review any purchase order to a large business issued by the contractor, regardless of whether the purchase order is directly related to the product being purchased by the Government.

- You must document the results of this analysis on SBA Form 1908, the "Subcontract Review Checklist Awards to Large Business."
- You must complete Section F of the SBPCR Checklist and discuss the results in the narrative section.



Follow-up on Prior Recommendations

- A SBPCR helps the large contractor improve its small business program by providing recommendations in the final report. Whether the contractor has implemented SBA's recommendations from the last review is significant.
- You may have previously evaluated whether the contractor has implemented SBA's previous recommendations during a Follow-Up Review. If this is so, you may make a statement in the narrative portion to this effect. If any recommendations have still not been implemented, you should list these specific recommendations.

Interpreting the Findings

The review determines the extent to which the contractor provides SB, SDB, WOSB, HUBZone, VOSB, and SD-VOSBs the maximum practicable opportunity to participate as subcontractors in the performance of Federal contracts. If a large contractor is providing maximum practicable opportunities, no matter what else the data may reveal (assuming the contractor has passed the initial review element described in Paragraph 5-4(c)), the contractor's performance should be considered acceptable.

The true measure of the program should be a combination of actual achievements, regulatory compliance, and pro-active efforts.

You must take great care to be consistent in the manner in which you determine ratings. Definitions are provided for each rating category—"*Outstanding*," "*Highly Successful*," "*Acceptable*," "*Marginal*," or "Unacceptable." These ratings are identical to the ratings used by DCMA.

Determining Material Breach of Contract

You may find a large contractor's small business program is in non-compliance. In such cases, you may recommend to the Contracting Officer (CO) that the firm should be found to be in "Material Breach of Contract."

Non-compliance results from a contractor not acting in good faith with the policies and procedures of Section 8(d) of the Small Business Act (15 U.S.C. Section 637(d)). Examples of specific situations leading to such a determination include, but are not necessarily limited to, the following:

•	A large contractor refuses to permit you to conduct a review as authorized by statute;
	A large contractor having a contract containing the clause at FAR 52.219-8 refuses

to subcontract to small businesses when it is clear that the opportunity to do so exists; and

You have performed a Program Review and have determined the contractor's program to be "Unacceptable."

Once you have decided to recommend a contractor's program to be in *Material Breach of Contract* and have obtained concurrence from your SBA Area Director for Government Contracting¹⁷, you should proceed as follows:

Write to the Contracting Officer (CO) advising that the SBA recommends the
contractor be placed in Material Breach of Contract. The letter should state the
reason for this recommendation and should ask the CO what action will be taken.

- If the CO initiates procedures to terminate the contractor's contract(s), you should maintain a dialogue with the CO until the contracts are terminated. If, as a result of the CO's cure notice or show-cause letter, the contractor remedies the situation to your satisfaction, you should advise the CO in writing that the recommendation of *Material Breach of Contract* is rescinded.
- If the CO fails to take positive action on SBA's recommendation, you should prepare a memo to the Assistant Administrator of the Office of Industrial Assistance in Headquarters. This memo, which must be transmitted through the AD/GC, should include the following information;

¹⁷SBA's Certificate of Competency Representative (CoC), certifies that one or more small business concerns possess the responsibility to perform a specific government procurement contract.

- A full explanation of the situation leading to the recommendation of *Material Breach* of *Con*tract including names, dates, and other pertinent details;
- A full explanation of the situation leading to the recommendation of *Material Breach* of *Con*tract including names, dates, and other pertinent details;
- A summary of the dialogue, oral or written, which has taken place between you and the CO regarding the matter, and copies of any correspondence.

Rating the Contractor

Each contractor is assigned a rating as a result of a SBPCR or Follow-Up Review. The possible rating categories are as follows:¹⁸

- Outstanding
- Highly Successful
- Acceptable
- Marginal
- Unacceptable

In order to determine which rating is appropriate, you should use the guidelines below. Note that "negotiated goals" refers to the percentage goals in the approved subcontracting plan. (Compare the percentage goals to the percentage achievements.)

Outstanding. Exceeded all negotiated goals or exceeded at least one goal and met all of the others. Has exceptional success with initiatives to assist, promote and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB), and service-disabled VOSB (SD/VOSB). Examples of such initiatives include, but are not limited to, participating in a Mentor-Protégé program, performing compliance reviews at subcontractors' sites, administering a buyer incentive program, participating in trade fairs, promoting registration in the CCR, and contacting suppliers to encourage SDB and HUBZone certification. An outstanding rating signifies that the company has an exemplary program that could be used as a model by other contractors in similar industries.

You may recommend a large contractor that receives an *Outstanding* rating for the *Award of Distinction*. Some reasons for **not** nominating a company with an

¹⁸Please refer to Appendix 3 for updated ratings as outlined in the MOU with DCMA.

Outstanding rating for the Award of Distinction may be:

- While all aspects of the contractor's program are exemplary, the program has not been operating at this level for a period long enough to determine that this is a permanent commitment;
- You are aware that the company is under investigation by a Federal Department's Inspector General for making false claims or other illegal activities; or
- You are aware that the contractor is in non-compliance with Equal Employment Opportunity requirements.

Highly Successful. Met all of its negotiated goals in the traditional socio-economic categories (SB, SDB, and WOSB) and met at least one of the newer socio-economic goals (HUBZone small business, VOSB, and SD/VOSB) for each contract that contains two or more of those goals. Has significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone small business, VOSB, and SD/VOSB. Makes an effort to go above and beyond the required elements of the program and can provide documentation and success stories to support such efforts.

Acceptable. Demonstrated a good-faith effort to meet **all** of its goals, but has not met the rigorous criteria for a *Highly Successful* or *Outstanding* rating. Fulfills the requirements of its subcontracting plan and the regulations. SF 294 and SF 295 reports are complete and accurate.

Marginal. Deficient in meeting key subcontracting plan elements, the SF294 and/or SF295 reports are not correct, or the contractor has failed to satisfy one or more requirements of a corrective action plan currently in place. However, contractor's management does show an interest in bringing its program to an acceptable level and has demonstrated a commitment to apply the necessary resources to do so. A corrective action plan is required, and the Administrative Contracting Officer(s) must be notified.

<u>Unacceptable</u>. Noncompliant with the contractual requirements of DFARS and FAR 52.219-8 and 52.219-9. Contractor's management shows little interest in bringing its program to an acceptable level or is generally uncooperative. For example, recommendations made by SBA or DCMA on previous reviews have never been implemented. A <u>corrective action plan</u> is required, and the Administrative Contracting Officer(s) must be notified.

You may also assign an *Unacceptable* rating to a contractor if it continually fails to cooperate with SBA even though no official SBPCR has been conducted. For instance, a company will repeatedly not agree to a SBPCR review date or will not allow you on its facility, or after repeated requests will not complete the SF 294 or SF 295 reports or will not provide you copies of the reports. Before assigning an *Unacceptable* rating, you should have exhausted all efforts to get the contractor to cooperate, including asking your SBA Government Contracting Area Director to place a call to the contractor's upper management. You should address your narrative to the CEO and identify the reason(s) why an *Unacceptable* rating has been assigned. The letter should request a Corrective Action Plan within a certain number of days (i.e., 45 days). You should inform the contractor that SBA will recommend to the Contracting Officer that a "Material Breach of Contract" will be found if a Corrective Action Plan is not received by the deadline. The letter should be provided to all parties that would normally receive the SBPCR narrative.

Conducting an Exit Briefing

Before the conclusion of the review, you should arrange a time for the Exit Briefing. In most cases the briefing may be conducted on the final day of the review. You may sometimes need more time to analyze the data and to develop the recommendations. In any case, the Exit Briefing must be conducted within 30 days after completing the review. If the Exit Briefing is postponed it may be conducted via teleconference instead of in person, if desired.

You should invite the following individuals to the Exit Briefing:

- (1) The corporate official at the President/Vice President level.
- (2) The Director of Purchasing.
- (3) The SBLO.
- (4) The SBLO's Supervisor, if not already listed under (1) or (2) above.
- (5) Any other members of the contractor's organization who you think impact, either directly or indirectly, the subcontracting program.

If any of the individuals named above are not able to attend the review, you may use your own discretion whether to postpone the exit briefing or continue without this individual.

The Exit Briefing should encompass all of the major points that will be in the final report. If you did not conduct an Entrance Briefing or if there are any attendees who did not participate in the Entrance Conference, you may wish to briefly summarize the objectives of the review. Other points

to be addressed during the Exit Briefing:

- (1) What documentation was reviewed and what interviews were conducted.
- (2) The major findings of the review (general and specific).
- (3) Recommendations that will be included in the final report.
- (4) The contractor's rating for this review ("Outstanding," "Highly Successful," "Acceptable," "Marginal," or *Unacceptable*). If you feel that this will lead to a prolonged discussion, you may withhold this information until the final report is released.

Sharing the Recommendations and the Rating with the Large Contractor

Within 45 days after your Exit Briefing, you must prepare a concise narrative report to the large contractor summarizing the results of the review. Your narrative must be typed and must address each of the following points:

u	Your major findings;
	Your recommendations;
	The company's rating;
	Your rationale for the rating; and
	A Corrective Action Plan is required if the contractor has been assigned a
	Marginal or Unsatisfactory rating. However, you may request a Corrective
	Action Plan if you desire when the rating is "Acceptable," "Highly
	Successful," or "Outstanding" (the latter in rare cases). You should state a
	realistic deadline for the Corrective Action Plan in your narrative, such as 30
	days.
	Each member of the contractor's organization who attended the Exit Briefing;

Each cognizant Contracting Officer; and

Your Area Director for Government Contracting.

Your letter to the contractor must contain the following paragraph "Once a year, SBA intends to share your rating with the head of the federal activity for which your have active subcontracting plans. Since this information may be used in the future to ascertain past performance, you may submit comments, rebutting statements, or additional information within 30 days after receipt of this letter in accordance with FAR 42.1503."

If your review encompassed any flow-down subcontracts with subcontracting plans, you should use extreme caution in providing a copy of the letter to the prime contractor. If any specific detail regarding performance on another contract is discussed you should sanitize the copy or you may refrain from providing a copy of the findings to the prime contractor altogether.

If this is a Joint Review with DCMA, your letter should be routed to your DCMA counterpart that attended for his or her signature. If another federal agency joined you in the review, you should route the narrative to the other agency in order to present the findings under both signatures (if possible), or just issue a narrative under your agency's jurisdiction.

Concluding Actions

Within 7 working days after completing the final report, you must enter the review data into the Subcontracting Computer System.¹⁹ The following information must be input:

- The date of the review;
- The type of review; and
- The company's rating ("Outstanding," "Highly Successful," "Acceptable," "Marginal," or *Unacceptable*).

Finally, you are responsible for making certain that all documents pertaining to the review are placed in the contractor's file without delay. At a minimum, these documents include the following:

- The original letter of notification;
- The notes used for the Exit Briefing;
- The SBPCR checklist, with attachments; and
- The final report, and the cover letter accompanying the report.

¹⁹ As of August 2004, this system is currently inoperable and will eventually be replaced.

Conducting a Tandem Team SBPCR

A Tandem Team SBPCR should be used when a contractor has multiple divisions that report under one subcontracting plan, or multiple sites that feed information into one SF 295 Report. All Tandem Team Reviews should be coordinated with the Office of Government Contracting Subcontracting Program Manager in Washington DC.²⁰

Before conducting <u>any SBPCR</u>, you should ask the contractor how its Small Business program is organized. If you determine that several divisions participate in the compliance of the subcontracting plan, you should confer with the other cognizant SPSs for those divisions and organize a Tandem Team Review.

In a Tandem Team Review, the *Lead* SPS will be the organizer of the review. He or she will conduct a full SBPCR at the *Lead* Prime Contractor's facility and assign a rating to the contractor. SPSs that cover the other divisions will conduct *Sub-site* reviews. Note that any division that prepares its own separate SF 295 report should not be considered a *Sub-site* and should receive a regular SBPCR.

In a Tandem Team Review, the *Lead* SPS will be the organizer of the review. He or she will conduct a full SBPCR at the *Lead* Prime Contractor's facility and assign a rating to the contractor. SPSs that cover the other divisions will conduct *Sub-site* reviews. Note that any division that prepares its own separate SF 295 report should not be considered a *Sub-site* and should receive a regular SBPCR.

Each *Sub-site* review will encompass any element that ultimately contributes to the fulfillment of the subcontracting plan. *Sub-site* SPSs should contact their respective division and coordinate a review date using the method described earlier.

- If a division prepares subcontract expenditures that are ultimately rolled into the *Lead* division's SF 295 report, you should review the *Sub-site*'s methodology for collecting these data.
- During the review, you will complete every portion of the SBPCR review checklist that is applicable to that division. For instance, if the contractor collects size self-certifications, you should do a random sampling of size self-certifications and check its methodology.
- Once you have completed the *Sub-site* review, you should forward your review checklist to the Lead SPS with a narrative explaining any findings or deficiencies. You will not assign a rating to a *Sub-site* review.

²⁰To find you OGC, go to: <u>www.sba.gov/gc.</u>

For most companies, the *Lead* division is obvious. But for some, there may be some confusion as to which division is the *Lead* division. To determine which division is the *Lead* Division, you must take into account:

- Which division prepares the SF 295?
- Which division has the SBLO that is named in the subcontracting plan?
- Which division does the majority of the purchasing?
- Which division seems to manage the subcontracting plan?

Sub-site reviews should ideally be conducted prior to the Lead SPS's review so that the Lead PS can encompass Sub-site review findings into the Lead review.

The Lead SPS will take into account all *Sub-site* findings, as well as the *Lead* division's findings, and determine the rating. The rating will apply to the *Lead* division and all *Sub-site* divisions. The Lead SPS will write the narrative to the Lead division. In addition to the parties listed in Paragraph 5-10(c), each *Sub-site* division and SPS covering the *Sub-site* division will receive a copy of the narrative.

If a *Sub-site* performs only menial tasks associated with the subcontracting plan, such as conducting minor outreach efforts to locate suppliers, then completion of the *Sub-site* review checklist can be waived upon the Lead SPS's approval. In this instance, the *Sub-site* SPS should have a conversation with that division and prepare a brief narrative to the Lead SPS discussing its minor role.

If a *Sub-site* division is located so remotely from the *Sub-site* SPS that travel funds cannot be justified, the *Sub-site* review may be conducted in accordance with the Off-site SBPCR guidelines.

While the Tandem Team Review may seem to be more cumbersome that a typical SBPCR review, it is designed to be more comprehensive and eliminate prime contractors from shuffling small business functions to one division to prevent effective oversight.

Both the *Lead* and *Sub-site* divisions should appear in the Subcontracting Computer Database since this information is transcribed into the Subcontracting Opportunities Director and both the *Lead* and *Sub-site* divisions all offer potential subcontracting opportunities for small businesses.

Conducting an Off-Site SBPCR

In some cases, it may not be practical or feasible to conduct an <u>on-site</u> SBPCR. In this instance, you may conduct an <u>off-site</u> SBPCR using mail and telecommunication methods such as email, phone interviews, etc.

Keep in mind that an on-site SBPCR is SBA's preferred method. Each Area Office of Government Contracting may only conduct two off-site SBPCRs a year.

You may not conduct an off-site SBPCR if the contractor has more than three active contracts with subcontracting plans.

To conduct an off-site review, you should follow the normal review steps as outlined in earlier.

- In your letter to the contractor establishing a review date, you should identify a date that all the information must be received by SBA, and a date that you will dedicate to review the information, and conduct a telephonic exit briefing.
- A LPC Binder Preparation Checklist will be mailed to the contractor with the letter. A week prior to the review you should also conduct your random samplings as described earlier.
- The SBLO should be available the entire day you have designated to answer any questions you might have. The entrance (optional) and exit briefings may be conducted via teleconference.
- Following your review, you will prepare a letter to the contractor.

Conducting a Self-Assessment

Self-Assessment SBPCRs offer a new approach for LPCs with well established, highly rated Small Business Programs. You may consider having a contractor conduct a Self-Assessment SBPCR if:

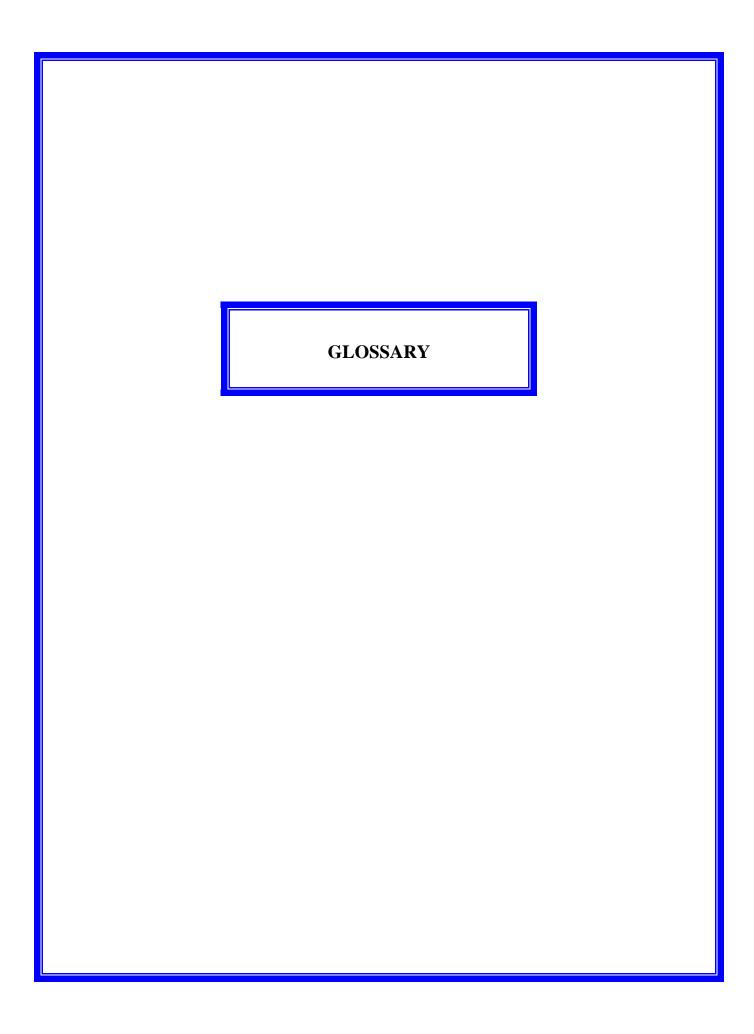
- The contractor received either a *Highly Successful* or *Outstanding* rating during its last SBPCR, and
- The contractor resolved any findings from the last SBPCR, and
- The SBLO has not changed since the last SBPCR, and
- You are the SPS that conducted the last SBPCR.

Your first step is to contact the SBLO and ask if he or she would be willing to conduct a Self-Assessment SBPCRs. If they agree to conduct a Self-Assessment, you should establish a mutually agreeable deadline for the contractor to have its review completed and mailed to you.

A Self-Assessment is virtually identical to a SBPCR, except that the contractor completes the SBPCR Checklist.

- The contractor must conduct its own random sampling of purchase orders and size self-certifications;
- The contractor will still assemble a binder with each element of the review information. The contractor will be given the rating definitions and assign its own rating;
- Once the contractor has completed the review, it must provide all of its documentation to you. You should review the information thoroughly;
- You do not need to conduct an entrance or exit briefing;
- You should mail the contractor a letter summarizing your review of the information and either agree or disagree with its self-assigned rating; and
- The contractor's official rating will be one that you assign in your letter to the contractor.

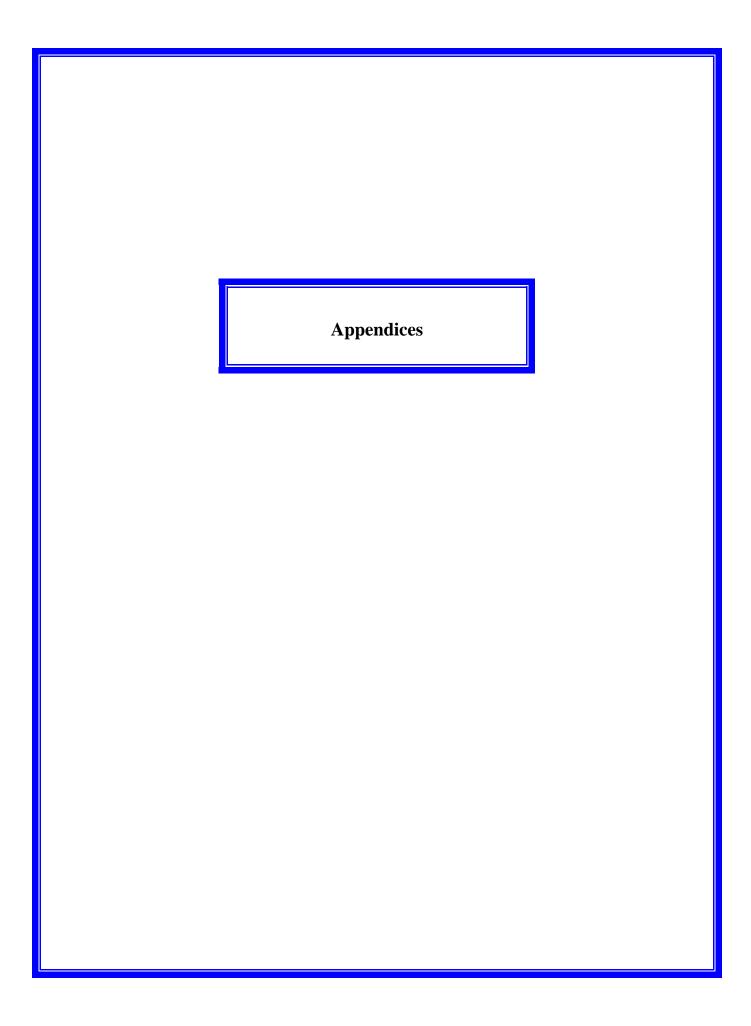
A company may not perform two successive Self-Assessments. An on-site SBPCR review must occur at least every other time.

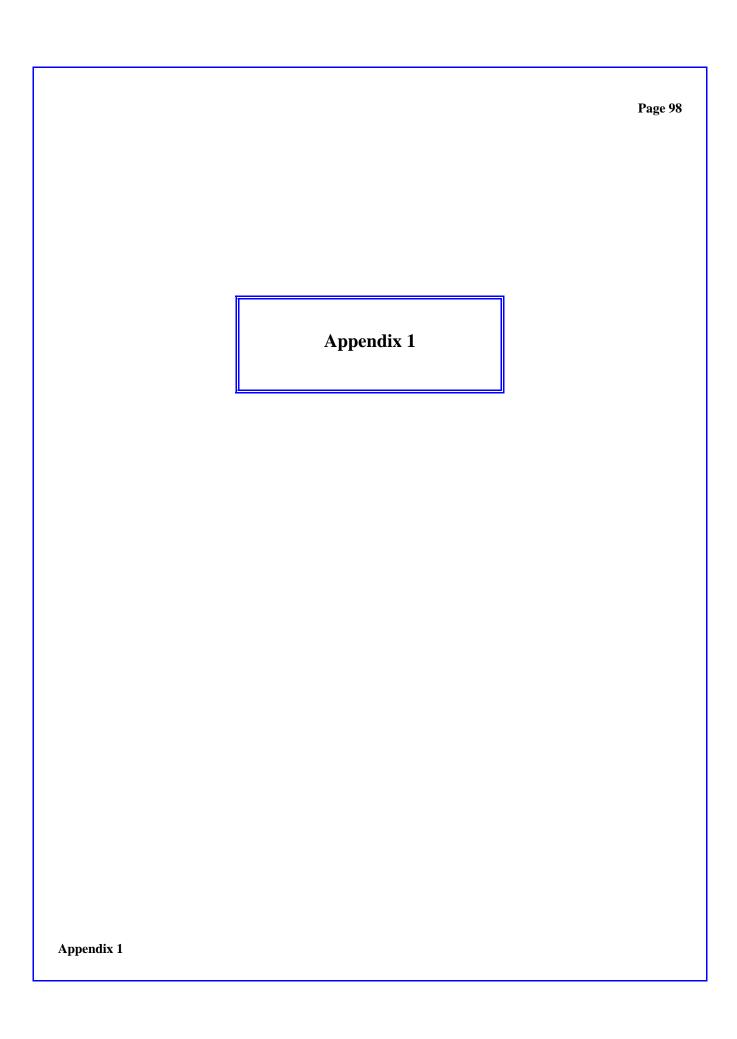


TERM	DEFINITION
ACO	Administrative Contracting Officer
CCR	Central Contractor Registration
CEO	Chief Executive Officer
CMR	Commercial Market Representative
CO	Contracting Officer
COR	Contracting Officers Representative
COTR	Contracting Officers Technical Representative
D & F	Determination and Finding
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Supplement
DOD	Department of Defense
DOE	Department of Energy
EFT	Electronic Funds Transfer
FAC	Federal Acquisition Council
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FPDS	Federal Procurement Data System
GSA	General Services Administration
HBCU/MIs	Historically Black Colleges or Universities/Minority Institutions
HUBZone	Historically Underutilized Business Zone Small Business
HUD	Housing and Urban Development
LB	Large Business

TERM DEFINITION			
LPR	Large Prime Contractor		
MOU	Memorandum of Understanding		
NAICS	North American Industry Classification System		
NASA	National Aeronautics and Space Administration		
NAVFAC	Naval Facilities Engineering Command		
OFPP	Office of Federal Procurement Policy		
OSDBU	Office of Small and Disadvantaged Business Utilization		
PCR	Procurement Center Representative		
RFP	Request for Proposal		
SB	Small Business		
SBA	Small Business Administration		
SBLO	Small Business Liaison Officer		
SBPCR	Small Business Program Compliance Review		
SDB	Small Disadvantaged Business		
SDVOSB	Service-Disabled Veteran Owned Small Business		
SES	Senior Executive Service		
SF	Standard Form		
SOAR	Subcontracting Orientation and Assistance Review		
SOP	Standard Operating Procedure		

TERM	DEFINITION
TSA	Transportation Security Agency
VOSB	Veteran-Owned Small Business
WOSB	Women-Owned Small Business





	SUBCONTRACTING REPORT FO			NTRAC	TS		MB No.:			
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GENERAL INSTRUCTIONS

- 1. This report is not required from small businesses.
- 2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
- 3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone SB), Veteran-Owned Small Business (WOSB) and Service-Disabled Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
- 4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.
- Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
- Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
- Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit <u>cannot</u> be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

- BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.
- **BLOCK 4:** Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.
- BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.
- BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.
- **BLOCK 7:** Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.
- **BLOCK 8:** Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

- **BLOCK 9:** Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.
- BLOCKS 10a through 16: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSBs, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 16. The amounts entered in Blocks 10a through 15 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.
- BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, service-disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.
- BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).
- BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).
- BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women or veterans).
- BLOCK 11: Report all subcontracts awarded to SDBs (Including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.
- BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs, VOSB's, service-disabled VOSBs, and HUBZone SBs owned by women).
- BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/Mls. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.
- BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).
- BLOCK 15: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (include VOSBs that are also SDBs, WOSBs and HUBZone SBs.).
- **BLOCK 16:** Report all subcontracts awarded to service-disabled veteran-owned SB concerns that are also SDBs, WOSBs, and HUBZone SBs.
- BLOCK 17: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSBs, Service-Disabled VOSBs, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance: or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

- 1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
- Indirect costs are those which, because of incurrence for common or Joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

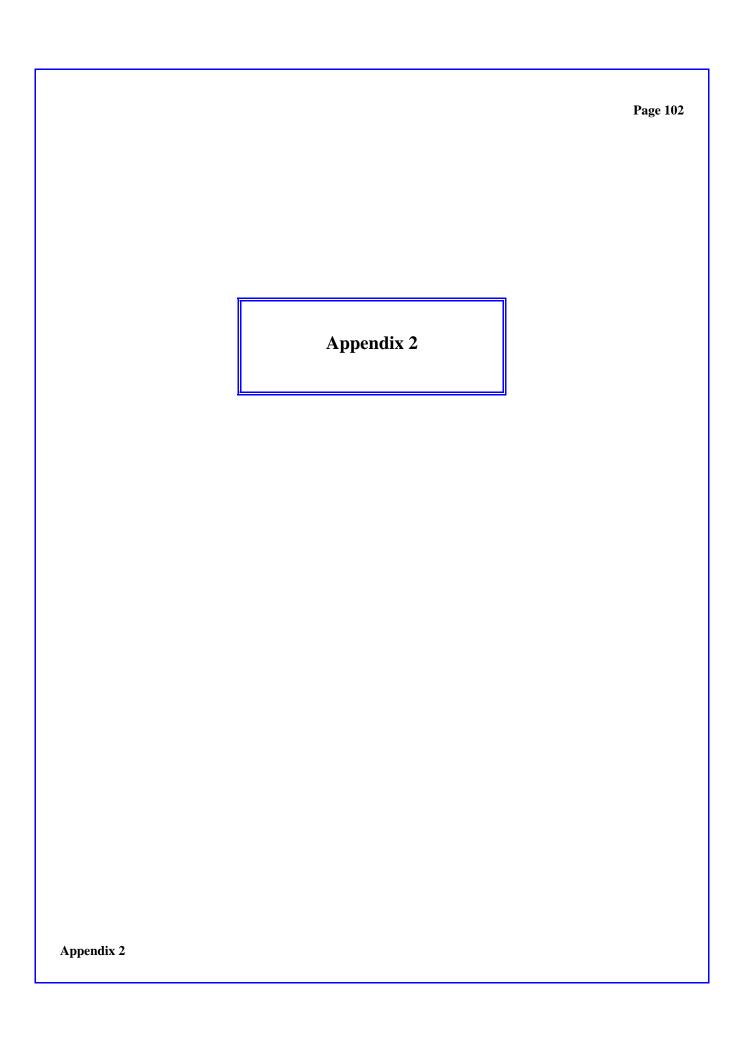
DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.



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GENERAL INSTRUCTIONS

- 1. This report is not required from small businesses.
- 2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 (over \$1,000,000 for construction of a public facility): and (b) are required to report subcontracts awarded to Small Business (8DB, Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Service-Disabled Veteran-Owned Small Business, and HIJBZone Small Business (HIJBZone Small Business (BOSB), Women-Owned Small Business, and HIJBZone Small Business (HIJBZone Small Business) (HIJBZone Small Business) (HIBZONE SM Soncerns under a subcontracting plan, For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
- 3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.
- This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwis directed by the agency awarding the contract.
- 5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$500,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)
- For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.
- 7. Only subcontracts involving performance in the U.S. or its outlying areas should be included in this report.
- 8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are \underline{not} included in this report.
- Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.
- 10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

- BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.
- BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.
- BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" roport. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.
- BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.
- BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only contract).
- BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 15b attributable to the agency to which this report is being submitted.
- BLOCK 9: Identify the major product or service lines of the reporting organization.
- BLOCKS 10a through 16: These entries must include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts must include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed

for the organization to which thereport is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, Service-Disabled VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts, to HBCUs or Mis should be reported on both Block 11 and 13.

- BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, service-disabled VOSBs, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.
- BLOCK 12: Report all subcontracts awarded to WOSB firms (including SDBs, VOSBs, service-disabled VOSBs, and HUBZone SBs owned by women).
- BLOCK 13: (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/Mls.
- BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, service-disabled VOSBs, and SDB HUBZone SBs).

BLOCK15: Report all subcontracts awarded to VOSBs (including women-owned, SDB, and HUBZone SB VOSBs).

BLOCK 16: Report all subcontracts awarded to service disabled VOSBs (including Service-Disabled Veteran Owned Small Business Concerns that are SDBs, WOSBs, and HUBZone SBs). These subcontracts should also be reported in Block 15.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

- This report is due on October 30th each year for the previous fiscal year ended September 30th.
- The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.
- Enter in Blocks 10a through 15b the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

- 1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).
- Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contractly these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

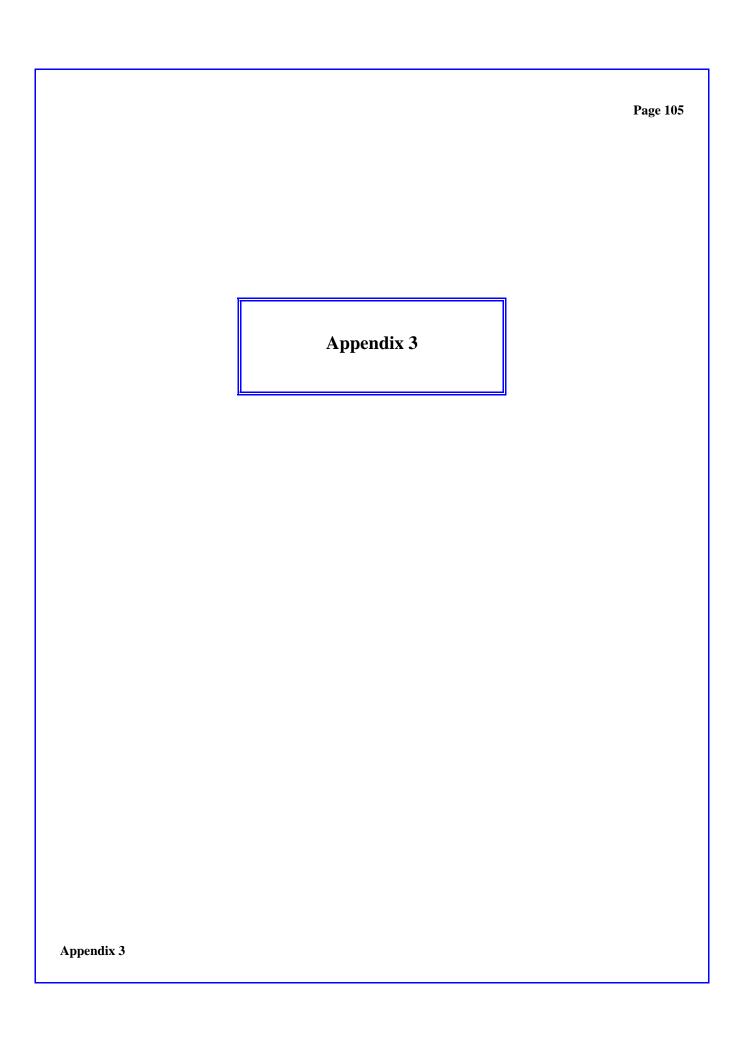
For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

- NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546
- OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if





SMALL BUSINESS PROGRAM COMPLIANCE REVIEW

PREPARATION CHECKLIST

Please have the following information and documentation in a binder in the same order it appears on this checklist ready on the date of my review.

General Information (please complete this sheet and use as a cover page in your binder)

Name of Company:	
Division of/dba:	
Mailing Address:	
Physical Address (if different):	
City, State, Zip:	
DUNS #: (numerical – 9 digits)	
Company Website: Small Business Link:	
Small Business Link:	
CEO/President:	
Small Business Liaison Officer (SBLO):	
Phone:	
Email:	
Alternate SBLO:	
Phone:	
Email:	
How many prime contracts with subcontracting plans does your company have List agencies:	?
How many subcontracts with subcontracting plans does your company have? List the prime contractors:	
Does your company have any other divisions that submit SF 294/295 reports?	
If you have a Master Plan / Commercial Plan / Comprehensive Plan, please proven's properly approved copy.	ovide the current

A. Sourcing

- Do you have any contracts for which you are not meeting subcontracting plan goals? If so,
 please provide a listing of product or services areas in which the SBA can assist you in locating
 SB, SDB, WOSB, HUBZone SB, VOSB, and SD-VOSBs?
- Do you have any contracts you are currently considering bidding on that SBA can help you to locate SB, SDB, WOSB, HUBZone SB, VOSB, and SD-VOSBs in the proposal stages?
- Explain how your company locates small businesses to use as subcontractors/vendors for future jobs.

B. Validation of SF 294/295 reports

- Prior to the review date, provide SBA with a listing of subcontracts¹ to any SB, SDB, WOSB, HUBZone SB, VOSB, and SD-VOSBs that you have awarded over the past year. Include the company name, size classification of company, and dollar value (either per subcontract or aggregate for the year). From this list, SBA will select a random sampling prior to the review date. Please have each selected firm's size self-certification available on the review date.
- Provide a sample of a blank size self-certification.
- If you are excluding any costs from your SF 294/295 reports, please provide a listing of these items
- Explain how a size self-certification is received, tied to a subcontract, and tracked all the way to your SF 294/295 reports. You may include your tabulation/print outs that you used to prepare your most recent SF 294/295 reports.
- Provide an explanation of how a proportionate share of your indirect costs is applied to your SF 295s and SF 294s (if applicable). Not applicable for companies with commercial Subcontracting Plans (applied at 100%).

C. Five Year Trend Analysis

An analysis of the last five year's SF 295 data reveals a trend. Ideally, this trend should be increasing slightly each year. However, the number of contracts, buying trends, and other factors often impact the trend.

- If your awards to SB, SDB, WOSB, HUBZone SB, VOSB, or SD-VOSB have been decreasing or remained stagnant over the past five years, provide an explanation.
- Are there any current practices in your company that are adverse for small business (ie.
 reducing supplier base, consolidating requirements)? If so, what measures are you taking to
 make sure that small businesses are not affected?

¹ "Subcontracts" is defined in FAR Part 19.701 as "any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for the performance of the contract, contract modification, or subcontract."

D. Overall Evaluation of the Subcontracting Program

D1. Management's Support of the Program.

- · Provide Policy Letter from CEO supporting the program.
- Provide an Organizational Chart (explain the access it provides the SBLO to administer the small business program and to obtain the cooperation of department heads and program managers).
- Explain how often and under what circumstances you meet with management regarding small business program goal accomplishment and other issues.
- Provide copies of your written Policies and Procedures providing guidance on small business utilization.

D2. Training.

- What small business training is provided to individuals at your company with purchasing authority (including those in off-site locations)? Include agendas/rosters, etc.
- Does your company have an incentive program to recognize buyers and other staff for outstanding utilization of small businesses? If so, explain.

D3. Outreach.

- Provide a listing of trade fairs and conferences for small business that you have attended or sponsored in the past year.
- Provide a list of local small business organizations and councils that you participate in.
- Describe any small businesses that you have found and utilized as a result of your outreach efforts.
- Describe your Mentor Protégé Program (DoD, 8(a) or other).
- Describe how a small business is counseled when it contacts your company.
- Describe any workshops/symposiums that you have hosted for small businesses interested in doing business with your company.

D4. Assistance Provided to Small Businesses

Provide examples of assistance you have provided to small businesses over the past year.
 Examples may include advance or partial payments, technical or quality assistance,
 equipment donations, obstacles that you have removed or waived for a small business, etc.

D5. Success Stories:

Provide documentation of success stories such as those resulting in an award of a contract
to a firm you met at an outreach activity, award of a contract to a company SBA referred
(8a firm), removing an obstacle so a small business could participate on a bid, redirecting a
subcontract from a large business supplier to a small business supplier, etc.

E. Subcontracting Plan Goal Analysis

- If you have not previously provided SBA a copy of all SF 294 reports, you should provide
 copies to SBA at least one week before the date of the review. You should also have a
 copy of each subcontracting plan available during the review.
- Explain who formulates the goals in your subcontracting plan(s), your involvement, and how
 these goals are formulated.
- If any of your contracts are not meeting their goals, document the reasons why. Do you have a
 corrective action plan for any goals that you are not currently meeting?
- Provide a list of Administrative Contracting Officers (name and addresses) for <u>all</u> of your contracts with subcontracting plans (not just those in the random sampling).

F. Subcontracts to Large Business

- Prior to the review date, send SBA a list of subcontracts over \$100,000 awarded to
 large businesses, issued over the last year. The list should include the date of the
 subcontract, subcontract number, large business that received the subcontract, and
 dollar value. From this listing, SBA will randomly select some files to review. On the
 review date, please have the actual subcontract file available.
- Prior to the review date, send SBA a list of any blanket purchasing agreements, corporate-wide purchasing agreements, or similar agreements that were established during the past year by this company/division. Any agreement that requires a particular large business to be used for repetitive purchases should be included in the listing (For example, a corporate purchasing agreement for Office Supplies).
- Provide a sample of your blank subcontract justification sheet (FAR 52.219-9(d)(11) requires each subcontract awarded to a large business over \$100,000 to explain whether SB/SDB/WOSB/HUBZone SB/VOSB/SD-VOSB was solicited and it not why not and the reason award was not made to a SB).
- Enclose the document your company uses to flow-down FAR 52.219-8 in every subcontract
 with subcontracting opportunities (N/A for companies with a Commercial Subcontracting
 Plan).
- Describe how your company requires subcontracting plans from your subcontractors with subcontracts over \$500,000 or \$1 million for construction. Explain how this plan is reviewed and monitored. A random sampling of subcontracting plans and SF 294 reports will also be conducted during the review. (N/A for companies with a Commercial Subcontracting Plan).

G. Follow-Up on SBA's Prior Recommendations

 If there were any recommendations made during SBA's last review, explain what action your company has taken to implement these recommendations.

H. Rating (For informational purposes only - no documentation required)

A summary of SBA's review findings, including recommendations, will be prepared and sent to your CEO/President and each federal agency with which you have an active or recently completed contract containing a subcontracting plan. You will be assigned a rating based on the following²:

Outstanding – Exceeded all negotiated goals or exceeded at least one goal and met all of the others.³ Has exceptional success with initiatives to assist, promote and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB), and service-disabled VOSB (SD/VOSB).⁴ An outstanding rating signifies that the company has an exemplary program that could be used as a model by other contractors in similar industries.

<u>Highly Successful</u> – **Met** all of its negotiated goals in the traditional socio-economic categories (SB, SDB, and WOSB) and met at least one of the newer socio-economic goals (HUBZone small business, VOSB, and SD/VOSB) for each contract that contains two or more of those goals. Has significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone small business, VOSB, and SD/VOSB. Makes an effort to go <u>above and beyond</u> the required elements of the program and can provide documentation and success stories to support such efforts.

<u>Acceptable</u> – **Demonstrated a good-faith effort** to meet all of its goals, but has not met the rigorous criteria for a *Highly Successful* or *Outstanding* rating. Fulfills the requirements of its subcontracting plan and the regulations. SF 294 and SF 295 reports are complete and accurate.

<u>Marginal</u> – **Deficient** in meeting key subcontracting plan elements, the SF294 and/or SF295 reports are not correct, or the contractor has failed to satisfy one or more requirements of a corrective action plan currently in place. However, contractor's management does show an interest in bringing its program to an acceptable level and has demonstrated a commitment to apply the necessary resources to do so. A <u>corrective action plan</u> is required, and the Administrative Contracting Officer(s) must be notified.

<u>Unsatisfactory</u> – **Noncompliant** with the contractual requirements of DFARS and FAR 52.219-8 and 52.219-9. Contractor's management shows little interest in bringing its program to an acceptable level

² For rating purposes, the sample should include all contracts completed during the past 12 months, or, for companies with a Commercial Plan or in the DOD *Test Program for Comprehensive Subcontracting Plans*, it should include the results of the most recent fiscal year ended September 30th (or other period ending date, if so authorized). Note: If a contractor with individual plans has no contracts that were completed during the past 12 months, the rating will be determined by contracts that are active, giving greater weight to those that are nearest to completion.

^{3 &}quot;Negotiated goals" refers to the dollar and percentage goals in the approved subcontracting plan. (For rating purposes, the reviewer will compare the percentage goals to the percentage achievements.)

⁴ Examples of such initiatives include, but are not limited to, participating in a Mentor-Protégé program, performing compliance reviews at subcontractors' sites, administering a buyer incentive program, participating in trade fairs, promoting registration in PRO-Net or the CCR, and contacting suppliers to encourage SDB and HUBZone certification.

or is generally uncooperative. ⁵ A <u>corrective action plan</u> is required, and the Administrative Contracting Officer(s) must be notified. SBLO Handbook: 11/03

⁵ For example, recommendations made by SBA or DCMA on previous reviews have never been implemented.